United States Court of Appeals

for the Second Circuit

SUPPLEMENTAL APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

76-3004

Docket No. 76-3004

NATHAN KEVELSON,

Petitioner,

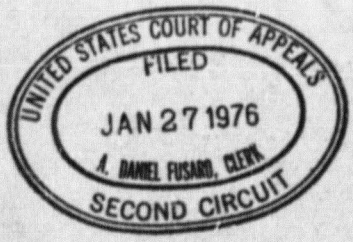
-vs.-

HON. JACK WEINSTEIN, UNITED STATES DISTRICT JUDGE, EASTERN DISTRICT OF NEW YORK,

Respondent.

On Petition For Writ Of Mandamus

PETITIONER'S SUPPLEMENTAL APPENDIX



HYMAN L. ZOLOTO
Attorney for Petitioner
600 Madison Avenue
New York, New York 10022
(212) PL 1-5200

Of Counsel:

HENRY J. BOITEL
233 Broadway
New York, New York 10007
(212) RE 2-8104

PAGINATION AS IN ORIGINAL COPY

INDEX TO SUPPLEMENTAL APPENDIX

	Page
Letter of Petitioner's Counsel to Meyer Texon, M.D. (January 16, 1976)....	A. 144
Proceedings of January 19, 1976	A. 145
List of Pre-Marked Government Exhibits Numbered 1-223	A. 159
Proceedings of January 20, 1976	A. 168
Government's Response to Petition For Writ of Mandamus, Requesting Delay of Consideration of Petition (January 19, 1976)(Defendant's Hearing Exhibit A)	A. 187
Stenographic Notes of Medical Examination of Nathan Kevelson by Dr. Meyer Texon (January 18, 1976)(Defendant's Hearing Exhibit B)....	A. 188
Dr. Texon's Unsigned Memorandum	A. 201
Proceedings of January 23, 1976	A. 204
Proceedings of January 26, 1976 (Colloquy)	A. 227
Further Proceedings of January 26, 1976 (Testimony of Charles A. Poindexter, M.D.)	A. 235
Affidavit of Hyman L. Zoloto, Esq. (January 22, 1976)	A. 287
Affidavit of Charles A. Poindexter, M.D. (January 22, 1976)	A. 292
Letter of Charles A. Poindexter, M.D. (January 22, 1976)	A. 294
Affidavit of Nathan Kevelson (January 26, 1976)	A. 297
Letter of Benjamin A. Rosenberg, M.D. (January 23, 1976)	A. 300

A 144

HENRY J. BOITEL
COUNSELLOR AT LAW

233 BROADWAY
NEW YORK, N. Y. 10007
(212) REctor 2-8104

Meyer Texon, M.D.
3 E. 68th Street
New York, New York 10021

By Hand

January 16, 1976

Reference: Nathan Kevelson

Dear Dr. Texon:

Pursuant to the request of Assistant United States Attorney John Caden, there is delivered to you herewith a copy of the Appendix of exhibits and proceedings with respect to the medical situation of Nathan Kevelson.

The letter opinions of Drs. Rosenberg, Dack and Poindexter, in chronological sequence, appear at pages 22,38,39,57,58,60,63,120,122 and 123. Medical charts and summaries appear at pages 24-37, 41-56, 61, 65-102.

Very truly yours,

Henry J. Boitel

HENRY J. BOITEL

CC: AUSA John Caden
Hyman L. Zoloto, Esq.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

-against- : 74-CR-370

AL KEVELSON and NATHAN KEVELSON, :

Defendants. :

----------X

United States Courthouse
Brooklyn, New York

January 19, 1976
9:30 o'clock A.M.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JOHN CADEN, ESQ.
Assistant U.S. Attorney

HYMAN ZOLOTO, ESQ.
-and-
STUART R. SHAW, ESQ.
Assistant U.S. Attorneys

THE COURT: Yes? You asked to see me?

MR. ZOLOTO: Yes. With regard to the marking of the records, there is no problem, your Honor.

However, I was on trial last week. In fact, the jury came in at 3:30 with a verdict Friday. I would estimate that between 2:30 and 3 I received a telephone call at the courtroom from Henry Boitel. The reason I received it from Henry Boitel is because I promised -- and we had agreed -- that we would with dispatch file a mandamus proceeding if the question was taken on appeal to the Second Circuit.

In my oral conversations with John Caden, I think we agreed it would be no later than Wednesday of the week -- is that a fair representation?

MR. CADEN: I think so.

MR. ZOLOTO: I was on trial, so that in lieu thereof -- and Stuart Shaw was on another assignment for the office -- I called in Henry Boitel to do it, and Arthur Cogle was handling another appeal -- we were just overpowered with respect to time. This was done on Wednesday.

On Friday, I received a telephone call and I took it on the public phone in the courtroom. Henry Boitel said to me that Court of Appeals had asked the federal attorney to respond to the petition and John

Caden had told Henry Boitel that -- or had offered if we agreed to an examination of the defendant, the agreement or stipulation or whatever we wanted to call it -- I am only talking hearsay now -- would be to the effect if the doctor found that Nathan Kevelson could not stand trial the Government would be prepared to discontinue the action with respect to Nathan Kevelson.

In the event the doctor found he could there would then be a hearing. This is a discussion between them.

Based on that, I said, you go ahead and make that deal with John Caden -- with John Caden -- because he needed and desired my consent.

On Sunday, I was present, together with a paralegal stenographer -- who is one of my secretaries -- at the office of the doctor and took a complete record of everything that we couldhear. There were certain portions, however, that took place in the examining room that neither I nor the lady, Miss Julia Vaz, were present. Incidentally, she is a law student who is going to take the bar in '77.

I came here this morning -- because the assignment was Stuart Shaw's, to mark the record -- but I came here this morning because the first think I was

interested in was your reply to the Court of Appeals; and the second was to tell John Caden I will tell him everything that this girl took down and we will type it up for him which will be backed up by the original shorthand notes that she took down. One question is, have you got the doctor's report -- because I full intend to pursue the hearing; and the next question is -- and I am very cognizant of what the Court has said with respect to the trial date of the 26th, so I would have to know what you are doing because we have to make an application for a stay. A stay at the very least.

John Caden has estimated -- and I hope we have a good relationship and I hope we tell each other what we mean -- gee whiz, I won't get the doctor's report for 10 or 12 days, he estimates. I say to him, I will consent to a hearing forthwith because I would have to call doctors and the only exception to that would be maybe I can't get a doctor on a certain date. I don't have anything like that in mind with respect to any delay, and then it dawned on me, doesn't the Court of Appeals first have to rule or state something? And then it dawned on me, under all the circumstances, maybe it would be best to report this to Judge Weinstein so that he would be apprised of all the facts.

And again, I most respectfully say to the Court, what is so earth-shattering that the trial must go on the 26th in view of all the circumstances and statements made? We have a basis of a hearing. I don't do anything frivolous or am I interested in delay or any frivolity.

And I am going to say something that may not be nice but I will say it because I said it to John Caden, if at a hearing I feel that the Court is wrong I will go up. The doctors encourage me that such a finding cannot be made.

THE COURT: I am here. I told the parties I am available at any time. If you have an application, make it. There is no application before me.

MR. ZOLOTO: I am going to make an application.

THE COURT: What is your application?

MR. ZOLOTO: I think that the trial date with respect to Nathan Kevelson should be put over for whatever should be a reasonable time in view of all the circumstances that I have explained.

THE COURT: That motion is denied. If you want to make another application I will hear it.

MR. ZOLOTO: The other application that I can make pending receipt of a doctor's report or decision

of the Court of Appeals --

THE COURT: Excuse me. I am not going to stay it further. If you want to make an application for a stay make the application in the Court of Appeals. If you want a hearing, I will be happy to --

MR. ZOLOTO: I am sorry. I didn't hear you and that's my fault.

THE COURT: Read it back.

(Above read by Reporter.)

THE COURT: -- hear the matter as soon as you apply.

MR. ZOLOTO: What I am saying to the Court is I am willing to apply right now.

THE COURT: For what?

MR. ZOLOTO: For a hearing.

THE COURT: Application granted. I will hear you this afternoon.

MR. ZOLOTO: I want the doctor and I can't be prepared for such a hearing.

THE COURT: When will the report be available?

MR. CADEN: The doctor told me it would be prepared within ten to twelve days.

THE COURT: He can dictate his report over the telephone.

MR. CADEN: I asked him yesterday.

THE COURT: What is the net effect of his report?

MR. CADEN: That he examined the defendant and he found that the defendant was physically capable of standing trial.

THE COURT: That is his report. That is sufficient.

MR. ZOLOTO: Without any back-up?

THE COURT: If you want to have a hearing subpoena the doctor. I am perfectly willing. I am available at all times.

MR. ZOLOTO: Most respectfully, I am entitled to the doctor's report if there is such a report or if he intends to submit such a report, he informed me he was going to do that --

THE COURT: Excuse me. I am not going to delay this trial. If you wish a hearing I will hear your doctors. I will hear the Government's doctor and any other evidence. I told you that before repeatedly. The trial is not going to be delayed by me. I am available this afternoon, tomorrow, I am available Wednesday, Thursday and Friday to give you a full hearing. If you want it, ask for it and I will give it to you. I am not going to permit the stalling of this trial.

MR. ZOLOTO: Do you believe I am stalling?

THE COURT: I certainly do. The Court has ruled

with respect to this issue. The issue is not [illegible] stated on the papers. You are going up in the best possible light. I assume the accuracy of the doctors and if you wish to make a record showing another doctor's opinion which is contrary to your doctors I will be happy to put it on the record. That can only reduce the probative force of your own papers as they now stand. I will be perfectly happy to hear it. If you want a hearing, I will hear it.

(continued next page)

MR. ZOLOTO: Can I explain to you, there is a motion before the Court of Appeals and the Court of Appeals has said to the United States Attorney's Office to respond to those papers.

THE COURT: Please, that is a matter for the Court of Appeals. I can only do my job. I am going ahead with the trial unless the Court of Appeals tells me to the contrary.

I am telling you, Mr. Caden, to call the Doctor and have him dictate his report over the phone to one of your stenographers and get it up to the Court of Appeals if that is what the defendant wants.

MR. ZOLOTO: I want what he filed in the Court of Appeals.

MR. CADEN: I certainly will provide what I file to the Court of Appeals to Mr. Zoloto.

THE COURT: If he wants a statement from the doctor, get it over the telephone. You don't want it notarized, do you?

MR. ZOLOTO: I will stipulate to what the doctor states to the United States Attorney's Office.

THE COURT: Get it over the telephone.

MR. CADEN: It may not be a very complete report.

THE COURT: Do the best you can. I don't care one way or the other. I have given defendant's counsel

a full opportunity for a hearing. In my opinion, the defendant doesn't do himself any good by putting into the record now a report which is contrary, I take it, to what has been said, to whathis doctors have already I assume the accuracy of the defendant's doctor. If you want something in the record contrary I am willing to hear it. Make your application to me. I am available all of today and any day this week. I will hear any evidence that either party wishes to submit.

On the evidence before me, my personal observations of the defendant, and on the entire record, I have concluded that this case must go forward as has been scheduled for some time.

MR. ZOLOTO: You rendered that opinion.

THE COURT: That's right.

MR. ZOLOTO: That is a question for the Court of Appeals.

THE COURT: Thank you, gentlemen.

MR. CADEN: May I ask one question? Do we have an application for a hearing?

THE COURT: We do not.

MR. ZOLOTO: We do not -- we have an application for a hearing on condition that you furnish me with the doctor's report. I would immediately contact our witnesses who are doctors.

THE COURT: Excuse me. Are you now applying for a hearing to me?

MR. ZOLOTO: I am applying for a hearing from you and I can't fix a date because I don't have a report from the examining physician and I don't know --

THE COURT: Excuse me. Yes or no?

MR. ZOLOTO: Yes.

THE COURT: The matter is set down tomorrow at 9:30 for a hearing. Call whatever witnesses you wish.

MR. SHAW: Can we have a date of Thursday so we can make --

THE COURT: No, the matter is before the Court of Appeals. It's set for what date for trial?

MR. CADEN: Monday.

THE COURT: No, I won't permit the case to be delayed by putting off the hearing. You had an opportunity last week for a hearing. This matter is not going to be further delayed.

MR. ZOLOTO: I asked you for a hearing.

THE COURT: I told you I would be delighted to hear your doctors. I assume what your doctors said would be what they would say on the witness stand. I gave you the best possible situation.

MR. ZOLOTO: You went further than that. In

your opinion --

THE COURT: To protect your record. -- if you want to reduce the impact of the record you may do so. 9:30 tomorrow morning for a hearing. Both sides have their witnesses.

Thank you, gentlemen.

(At this time, Judge Weinstein left the courtroom.)

MR. CADEN: I would like the record to reflect, present at the pretrial marking of the exhibits is Mr. John Caden, along with George Tierney, Special Agent of the Internal Revenue Service, along with Mr. Stuart Shaw, of counsel, for Hyman Zoloto.

I would like to mark the following exhibit as trial exhibit in the case of United States v. Nathan Kevelson.

Mark Mr. Al Kevelson's 1969 personal income tax return for the year 1969 as Government's Exhibit 1.

(Pause.)

MR. SCHAW: Acting of counsel for Mr. Zoloto, on the strength of the statement from the Reporter that he has spoken to his Honor regarding the Reporter taking down all the marking of the exhibit before Mr. Caden, I can safely say both sides stipulate this is not

necessary, especially in regard to the fact the reporters are short of manpower and both sides would like a copy of the minutes of this morning's discussion before his Honor; consequently, I think both sides would stipulate to having the Clerk of the Court who is present here today take down the marking of the exhibits and whatever the Clerk of the Court keeps we will stipulate to make part of the record in this case.

MR. CADEN: I would like to add one further thing: At the end of the marking session, we will ask for a Court Reporter so the document used to identify the exhibits may be stated for the record and any objections there may be to any of the exhibits.

* * *

Before Judge [illegible]

Date: 1/19/76

A 159-1

File Number: 74 C 370

Plaintiff: United States

V/S

Attorney: John Cooke

Defendant: Kevelson

V/S

GOVERNMENT EXHIBIT

Attorney

3 rd. Party Dft.

Attorney

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	Al Kevelson - Income Tax Return (1969)	1	
	Income Tax Return (1970) Al Kevelson	2	
	Income Tax Return (1971) Al Kevelson	3	
	Income Tax Return (9/70) (Empire Ace Insulation)	4	
	" (9/71) (Empire Ace Insulating)	5	
	U.S. Mineral Products Invoice #18857 1/14/70	6	
	Purchase Ledger, Empire Ace 1/69-9/30/70	7	
	Purchase Ledger, Empire Ace 10/70-9/71	8	
	Petty Acct's Payable ledger (Empire Ace)	9	
	Cash Disbursement Ledger 10/69-12/70	10	
	Cash Disbursement Ledger 10/69-9/71	11	
	(Braun) General Ledger 9/70. 9/71	12	
	Guggenheim Int. Co Invoice # 677 1/22/70	13	
	Cancelled check - payable to Guggenheim #25778	14	
	Guggenheim Invoice # 790 2/14/70	15	
	Cancelled check payable to Guggenheim #25985	16	
	Guggenheim Invoice # 972 6/12/70	17	
	Guggenheim Invoice #1241 6/22/70	18	
	Cancelled check #27916 payable to Guggenheim	19	

	Guggenheim Invoice #522 7/3/70	20	
	Cancelled check payable to Guggenheim #27192	21	
	Guggenheim Invoice #1084 8/1/70	22	
	Cancelled Check payable to Guggenheim #27258	23	
	Guggenheim Invoice #1062 8/1/70	24	
	Cancelled Check payable to Guggenheim #27320	25	
	Guggenheim Invoice #1133 9/15/70	26	
	Cancelled check payable to Guggenheim #27561	27	

A 159-2

Before Judge: _____ File Number: 74CR-370

Date: _____ A 160-1

Plaintiff — Attorney

V/S

Defendant — Attorney

V/S

3 rd. Party Deft. — Attorney

GOVERNMENT EXHIBIT

WITNESS	DESCRIPTION OF ITEMS	IDENT.	EVIDENCE
	Guggenheim Invoice #4687 1/27/71	28	
	Cancelled check payable to Guggenheim #28579	29	
	Guggenheim Invoice #7682 5/6/71	30	
	Cancelled check payable Guggenheim #29639	31	
	Montanaro Inc, Invoice #3720 11/4/70	32	
	Cancelled check payable to Montanaro #25788	33	
	Bleecker Hardware Invoice 1/2/70	34	
	Cancelled Check payable to Bleecker Hdw #21760	35	
	Bleecker Hardware Invoice 2/18/70	36	
	Cancelled Check payable to Bleecker #23525	37	
	Bleecker Hardware Invoice 6/26/70	38	
	Cancelled check payable to Bleecker 27032	39	
	Bleecker Hardware Invoice 8/2/70	40	
	Cancelled Check payable to Bleecker #27246	41	
	Bleecker Hardware Invoice 1/25/71	42	
	Cancelled Check payable to Bleecker #30556	43	
	Bleecker Hardware Invoice 5/24/71 #6385	44	
	Cancelled Check payable to Bleecker #27634	45	
	Bleecker Hardware Invoice 5/6/71 #6813	46	

	Cancelled check - payable to Bleecker		47
	Bleecker insurance Invoice #1711	1/11/70	48
	Cancelled check payable to Bleecker	#26844	49
	Bleecker Bank Statement	11/9-12/70	50
	Atlantic Asbestos Invoice	1/14/70 #37246	51
	Cancelled Check payable to Asbestos	#25762	52
	Atlantic Asbestos Invoice	2/25/70	53
	Cancelled check - payable to Atlantic	#25917	54

A160-2

:Before Judge: _____ File Number: 74 4370

Date: _____ A 161H

Plaintiff	Attorney
V/S	
Defendant	Attorney
V/S	
3 rd. Party Dft.	Attorney

GOVERNMENT EXHIBIT _____

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	Atlantic Asbestos Invoice 7/27/70	55	
	Cancelled Check payable to Atlantic #27190	56	
	Atlantic Asbestos Invoice #96443 8/20/70	57	
	Cancelled check payable to Asbestos #27245	58	
	Atlantic Asbestos Invoice 9/22/70	59	
	Cancelled Check payable to Atlantic #27496	60	
	Atlantic Asbestos Invoice 12/29/70	61	
	Cancelled Check payable to Atlantic #28244	62	
	Atlantic Asbestos Invoice 5/24/71	63	
	Cancelled Check - payable to Atlantic #30??	64	
	Atlantic Asbestos Invoice #24824 12/16/69	65	
	Chart - Al Keselson Taxable Income	66	
	Copy of Ledger (A/c) Empire Ace	67	
	U.S Mineral Wool Co. Invoice 11/5/70	68	
	Cancelled Check - payable to U.S Mineral #25802	69	
	U.S. Mineral Wool Co Invoice #884 2/11/70	70	
	Cancelled Check payable to U.S. Mineral #26023	71	
	U.S. Mineral Wool Invoice #1162 7/24/70	72	

	Cancelled check payable to U.S. Mineral # 27197 12/69	73	
	U.S. Mineral Wool Invoice # 6227 12/4/70	74	
	Cancelled check payable to U.S. Mineral	75	
	U.S. Mineral Wool Invoice # 4167 9/16/70	76	
	Cancelled check payable to U.S. Mineral	77	
	U.S. Mineral Wool Invoice # 1736 9/24/70	78	
	Cancelled check payable to U.S. Mineral # 27556	79	
	U.S. Mineral Invoice # 9032 12/1/70	80	
	Cancelled check payable to U.S. Mineral # 28202	81	

Before Judge: _____ File Number: 74 CM 370

Date: _____ A 162-1

Plaintiff | Attorney

V/S

Defendant | Attorney

V/S

3 rd. Party Def | Attorney

GOVERNMENT EXHIBIT

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	U.S. Mineral Invoice # 10684 8/10/71	82	
	Cancelled check payable to U.S. Mineral # 30315	83	
	Cancelled Check " " " # 26615	84	
	Copy Sales Ledger 3/70	85	
	Copy Sales Ledger 3/71	86	
	Copy Sales Ledger 3/72	87	
	Nicolet Industries Invoice # 325 2/4/70	88	
	Cancelled Check payable to Nicolet 2 Used	89	
	Nicolet Indus Invoice # 5611 6/12/70	90	
	" " " 5772.29 6/12/70	91	
	Cancelled check payable to Nicolet # 2 2 2 . 8	92	
	Nicolet Invoice # 340 7/23/70	93	
	Cancelled Check payable to N. Nicolet # 27194	94	
	Nicolet Indus Invoice # 2 0 0 6 7 8/25/70	95	
	Cancelled Check payable to Nicolet # 27279	96	
	Nicolet Indus Invoice # 1010 9/28/70	97	
	Cancelled Check payable to Nicolet # 27527	98	
	Nicolet Indus Invoice # 1162 12/22/70	99	
	Cancelled Check payable to Nicolet # 28243	100	

	Nicolet Indus. Invoice # CY729 10/2/70	101	
	Cancelled check payable to Nicolet # 25613	102	
	Nicolet Indus. Invoice # 76524 5/25/71	103	
	Cancelled Check payable to Nicolet # 29650	104	
	Nicolet Invoice # 7564 8/20/71	105	
	Cancelled check payable to Nicolet # 30213	106	
	Nicolet Invoice # 81215 Estimated 4/14/70	107	
	Cancelled Check payable to Nicolet # 26461	108	

A 162-2

Before Judge: _____ File Number:

Date: _____ A 163-1

Plaintiff	Attorney
V/S	
Defendant	Attorney
V/S	
3 rd. Party Deft.	Attorney

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	A/R Co Ledger Sheet (65-72)	109	
	H.A. Jones Co Invoice 1/16/70	110	
	Cancelled check - payable to H.A. Jones #25252	111	
	H.A. Jones Invoice 2/9/70	112	
	Cancelled Check payable to H.A. Jones #25293	113	
	H.A Jones Invoice 6/25/70	114	
	Cancelled CK. payable to H.A. Jones 7/12/70	115	
	H.A. Jones Invoice 7/27/70	116	
	Cancelled CK. payable to H.A. Jones #27194	117	
	H.A Jones Invoice 7/31/70	118	
	Cancelled CK payable to H.A. Jones #27261	119	
	H.A. Jones Invoice 9/21/70	120	
	Cancelled CK payable H.A. Jones #27518	121	
	H.A. Jones Invoice 9/30/70	122	
	Cancelled CK payable to H.A. Jones #27557	123	
	H.A. Jones Invoice 12/16/70	124	
	Cancelled CK. payable to H.A. Jones #25273	125	
	H.A. Jones Invoice 1/25/71	126	
	Cancelled CK payable to H.A. Jones #27695	127	

	H.A. Jones Invoice 5/18/71	128	
	Cancelled CK. payable to H.A. Jones #3,647	129	
	H.A. Jones. Invoice 3/24/71	130	
	Cancelled CK payable to H.A.J. #3,311	131	
	8 photocopies @ Empire Access	132	
	Guggenheim Invoice (Blank)	133	
	H.A. Jones Invoice (Blank)	134	
	Accountant Work Sheet (Blank)	135	

A163-2

Before Judge: _____ File Number:

Date: _____

Plaintiff	A 164-1 Attorney
V/S	
Defendant	Attorney
V/S	
3 rd. Party Deft.	Attorney

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	Acct Work Sheet (Herman Shanker) 1/24	136	
	Chart of Purchases by Empire Ace	137	
	Acct of Empire Ace Bx. Encon	138	
	~~Cert. of Deposit #3123 (Herman Shanker)~~ Central State Bank	~~139~~	
	Certificate of Deposit #3123 (Herman Turner)	139	
	Copy of Central State Bank Credit Memo Edith	140	
	" " " " " Supreme Leige 2/14/72	141	
	" " " " " Debit Memo 2/24/72	142	
	Certificate of Deposit #3246 (Victor Sell)	143	
	Copy of Central State Cert. of Deposit	144	
	Cert. of Deposit #4.22 (Victor Sell)	145	
	Cert. of Deposit #3172 (Lisa March)	146	
	Copy of Grout's 146 File Envelope	147	
	Official Central State Bank CK Payable to M Coulter	148	
	Photocopy of Dawn Lilkins CK #2164	149	
	Cert. of Deposit #3024 (Victor Sell)	150	
	Copy of Check payable to V. Sell	151	
	" " " " " " 653	152	
	Copy of Security Pacific Statement Empire Ace Unit Holder	153	

Bank Act signature card	154	
Cert. of Deposit #2255 (with Seal)	155	
Copy of Int. Ex. Hanover check 2nd 5/6/59	156	
Cert of Deposit #2310 (under Seal)	157	
" " " #2741 (")	158	
" " " #3154 (")	159	
" " " #3243 (")	160	
" " " #4159 (")	161	

A 164-2

Date: _____ A 165 _____

Plaintiff	Attorney
V/S	
Defendent	Attorney
V/S	
3 rd. Party Dft.	Attorney

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	Cert. of Deposit #2753 (Victor Sell)	162	
	" " " #3699 (")	163	
	" " " #1894 (Herman Turner)	164	
	" " " #2200 (")	165	
	" " " #2599 (")	166	
	" " " #2981 (")	167	
	" " " #3985 (")	168	
	" " " #1892 (")	169	
	" " " #2192 (")	170	
	" " " #2593 (")	171	
	" " " #2972 (")	172	
	" " " #3981 (")	173	
	Central State Bank #3618 payable to Turner	174	
	" " " " #3618 payable to James Ewing	175	
	" " " " #2192 Herman Turner	176	
	" " " " #3618 James Pickett	177	
	" " " " #9760 Herman Turner	178	
	" " " " #9790 Herman Turner	179	
	" " " " #9528 American Express	180	
	" " " " #9510 Victor Sell	181	
	" " " " #1015 "	182	
	" " " " #11116 Herman Turner	183	
	" " " " #11141 Herman Turner	184	
	" " " " #11681 Victor Sell	185	
	" " " " #1113 "	186	
	" " " " #13657 RCA Service	187	

Date: A-100

Plaintiff	Attorney
V/S	
Defendant	Attorney
V/S	
3 rd. Party Deft.	Attorney

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	Central State check #13589 payable to Chastaine Mem. Gdn.	189	
	" " " : #14857 Herman Turner	190	
	" " " " #14896	191	
	" " " #15371 Victor Sell	192	
	" " " " Sell #13562	193	
	" " " " " #16004 Sell	194	
	" " " " " Sell 15749	195	
	" " " " #16576 Bankers Trust.	196	
	Summary Chart-Cost Deposit #3246	197	
	" " " " #3123	198	
	" " " " #3572	199	
	" " " " #3024	D00	
	" " Interest Paid	201	
	Copy of letter from Hl Keesler	202	
	Holmes Protective Service H/R 6/3/69	203	
	" " " " 7/69	204	
	Application American Express Travelers check	205	
	Service Agreement from R.C.A.	206	
	Savings Statement - Chastaine Mem.	207	
	Bankers Trust Ledger - Empire Acc	208	
	Application For Time Deposit Bankers Trust	209	
	Copy of Excerpt of C/C Bank	210	
	" " Deposit Slip - Designs Market	211	
	Copy Gen'l Ledger N/F Bankers Trust	212	
	" " " " Victor Sell	213	
	" Designs Marketing C/C payable to Sell #20617	214	
	Copy of Account C/D Designs Mkt	215	

Before Judge: _____ File Number:

Date: _____ A 167

Plaintiff	Attorney
V/S	
Defendant	Attorney
V/S	
3 rd. Party Deft.	Attorney

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	Copy of Letter 12/6/71 Re Central State Music	216	
	" " Debit, Credit memo Central Time Book	217	
	" Designer Stock Kit N/P Ledger 6/72	218	
	" Central State BANK Statement 12/71	219	
	" " " " change Ticket	220	
	" ck. Rohendal Assoc to Self 11/6	221	
	" " " " " 549	222	
	1 page N/P Ledger (Different Engine Hand) 10/1-12/31/71	223	

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-370

NATHAN KEVELSON, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

January 20, 1976
9:30 o'clock A.M.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

FRANCES KARR
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JOHN CADEN, ESQ.
Assistant U.S. Attorney

HYMAN ZOLOTO, ESQ.
-and-
STUART R. SHAW, ESQ.
Attorneys for Defendants

THE CLERK: Criminal hearing, United States of America v. Nathan Kevelson.

MR. ZOLOTO: Your Honor, should we have Mr. Kevelson up here?

THE COURT: Certainly, have him here right at the table.

All right, call your first witness.

MR. ZOLOTO: I want to make a statement.

THE COURT: I want your first witness.

MR. ZOLOTO: I received a medical report this morning.

THE COURT: Do you have your first witness?

MR. ZOLOTO: I have no witnesses because I have not prepared --

THE COURT: Excuse me. Do you have a witness?

MR. ZOLOTO: No, I have no witness. I intend to subpoena Dr. --

THE COURT: Pardon me, I wish you would not interrupt. Do you have any documents you wish to introduce?

MR. ZOLOTO: I have copies of documents.

THE COURT: Mark the documents that are introduced as Defendant's documents at the hearing.

MR. ZOLOTO: I have a document in response to

the Clerk of the United States Court of Appeals. I have a verbatim -- that is the best that could be taken by Mrs. Julia Vaz of the examination that was taken.

THE COURT: All right, mark the letter.

THE CLERK: One-page document marked Defendant's Exhibit A.

(So marked.)

Medical examination marked Defendant's Exhibit B.

(So marked.)

MR. ZOLOTO: If we could have a clean copy of the medical report of Dr. Texon I would submit it. If the Court please, I received it this morning only because I had to get to bed early last night. It was delivered to my home at seven or seven thirty and I was in bed. I looked at it this morning.

THE CLERK: Document marked Defendant's Exhibit C.

(So marked.)

MR. ZOLOTO: I need an opportunity to talk to our doctors based upon that report because we did not receive what I understood to be agreed upon, a copy of a cassette dictated by Dr. Texon and the understanding then would be I would go to our doctors on the basis of

that and we would set a date for a hearing.

THE COURT: The hearing is being held this morning, sir.

MR. ZOLOTO: Well, I have objections to a hearing that would be unmeaningful.

THE COURT: Excuse me. I wish you would not interrupt me because we will not get along well. What is the evidence you wish to present that you claim you have no time to present?

MR. ZOLOTO: The evidence that I wish to present is what transpired between him and John Caden and I would also want to present our doctors. I also want an opportunity to have a conference with the doctors based upon Dr. Texon's report.

THE COURT: When are you going to be prepared? The case is set for Monday.

MR. ZOLOTO: I am saying this to your Honor. I have an arrangement with Dr. Poindexter. I could not do it last night because I did not have the report.

THE COURT: Excuse me, the trial is set for Monday. You have today, Wednesday, Thursday and Friday. When do you want this hearing adjourned to?

MR. ZOLOTO: I would say Thursday or Friday but what I intend to do is this so that your Honor would understand.

THE COURT: I just want --

MR. ZOLOTO: I must explain this to you.

THE COURT: I just want to know what hours you want for a hearing.

MR. ZOLOTO: I feel in the doctrine of fairness I must explain to your Honor.

THE COURT: I must make my calendar arrangements. You want Thursday at what time?

MR. ZOLOTO: I cannot tell you until I find out when my doctors -- I am dealing with doctors who will be available to testify.

THE COURT: Very well, call my Law Clerk if you will.

MR. ZOLOTO: But I will tell you what I will do --

THE COURT: Excuse me, you are going on Monday unless you can prove to me this week, and I am giving you a whole week, that this trial should not take place on Monday.

MR. ZOLOTO: I have clearly understood from your Honor way back --

THE COURT: My schedule --

MR. ZOLOTO: That this trial will be set for Monday.

THE COURT: I do not understand why you talk

when I am talking.

MR. ZOLOTO: I thought I was talking.

THE COURT: The Reporter cannot take us both. I am perfectly willing to stop for you and I hope you will do the same for me.

MR. ZOLOTO: All right.

THE COURT: I will be free any time you want me to be free this week. If you let my Law Clerk know he will set it up any time you would like. As of this moment there is nothing that has been presented to me that would cause me to change my opinion.

MR. ZOLOTO: May I say this to your Honor? Since the motion for re-argument the Court of Appeals has directed the United States Attorney to respond to our petition for mandamus. The response of the United States Attorney and particularly an agreement that I adhered to was to say the very least non-dilatory.

THE COURT: Excuse me, I am not interested in what happened in the Court of Appeals. I am only interested in my problem and I really do not care what happened in the Court of Appeals.

MR. ZOLOTO: Our discussion has been at all times that this case go on Monday unless I can procure a stay and that would have to be in from the

Court of Appeals and that was made crystal-clear in our discussion and at every motion.

I am telling your Honor in all fairness that I will move with reasonable dispatch and contact our doctors which is the first opportunity that I have because I have received the report from Dr. Texon. I am not impressed with that report. I am not doing this for any dilatory tactics.

THE COURT: I am not making any decision at all on the information presented this morning, Exhibits A, B or C. My decision was based on my observations of the defendant and your exhibits so that so far as I am concerned there is nothing that Dr. Texon has said that has affected it one way or the other.

MR. ZOLOTO: However, in the Government's answer to our petition the Government has said we will have a hearing. The Government had requested a hearing in the Court of Appeals, not us.

THE COURT: The Government cannot say they will have a hearing. I will decide that. I am granting a hearing not on the Government's request but on your request and I have made it clear on the record that in my opinion this request for a hearing is part of your dilatory tactics because nothing that can happen at the hearing will put your case in a better posture than

it is now since I have accepted fully your doctors' reports and I have given no credence at all to the report of the Government. The only effect, therefore, of the hearing is that I will give more credence to the report of the Government and less credence to your reports. Under the circumstances, the only logical conclusion is that these hearings are for the purposes of delay.

MR. ZOLOTO: Your Honor had stated for the record the last time and actually invited me to proceed with the appeal. I would have done it anyway had your Honor invited me or not and I think we understand each other because I think I am right and you think you are right. That is why we have a Second Circuit. I am telling your Honor now I am going to the Second Circuit to see whether you are right or I am right.

I am going to say something that I have never said to your Honor but I have said this to John Caden. This defendant cannot stand the rigors of a trial nor can he take the stand so that everybody sitting here now knows that there will be no trial.

The only issue before the Court of Appeals is a very simple one in my opinion, and that is this: The medical condition of Nathan Kevelson. Can a Judge

say, based upon all the evidence that is before it and based upon certain rights that I want and I certainly want Dr. Texon to testify. I have no dilatory intentions. I have indicated that to the United States Attorney. I have indicated it, too, I believe, absolutely to your Honor because at the very outset I said in my papers and I said it under oath, we cannot prepare this defendant for trial. If you will read the verbatim notes, although it does not affect your decision whatsoever, you will see in the discussion with the doctor of a voir dire how he explains when you discuss the case what happens to him, what he has to do and what happened at the voir dire. You will see that that Dr. Texon said this is a very difficult problem and "I am glad I do not have to decide it." And I had my secretary there for that purpose.

I intend to proceed further only on that narrow issue.

If God is good to me or both of us I will appear before you again. I have told you before I had a high regard for you.

THE COURT: Which is reciprocated.

MR. ZOLOTO: You told me you had a high regard for me and you called me eminent counsel and I like that. I know people very well that you do not know

but I know about very well that are close to you and close to me.

We have a narrow issue to determine based on the medical evidence here that Nathan Kevelson is not entitled to a continuance. If the appellate court says yes we are not using any dilatory tactics. I am not that type. I do not have that intention and that was disclosed a long time ago and I even said that in my papers to your Honor. It was that that disturbed me very greatly yesterday.

Now I am going to say this is the last statement. I have an awful lot of confidence in Charles Poindexter who I believe is one of our most eminent physicians. I called him yesterday. I call him Charley, so the Court will know. He said to me he was most anxiously awaiting for Dr. Texon's report but could not get it. I came here yesterday and we never would have had the confrontation because I never desired to be here. To me the marking of records was but a useless act because I have disclosed our intention and maybe I should have said this earlier and maybe I should have said it but I thought I said it and I thought it was clearly understood, could he go to trial or can't he? He is not going to trial, this case will not be tried. I will not be responsible.

the doctors will not let me be responsible, I can tell you that right now.

Charley Poindexter said to me, "If you get the report," and he is not too young, either, "I will meet you in my home."

Charley Poindexter has wanted to call you many times on the telephone and I had to restrain him. He feels very strongly about this. He is an expert that I called in independently and he has examined every record for a long time.

He said, "I have lot of very sick patients. It is possible that if I can't make it this week I will be ready around Monday."

I said I did not know. I said let us first get the report.

Now, your Honor, I most respectfully say this to you: Knowing all these facts, what is so earth-shattering when you know your calendar cannot possibly be affected and most respectfully you should know that I am notdilatory in any manner, shape or form.

At great expense to me while I was on trial last week I was compelled to hire another lawyer because our office was swamped to get out the mandamus petition because I made a promise to this Court and I made a promise to the federal attorney's office and

I made a promise to a due date. The only reason that I am hedging with respect to time is you are trying to pin me down to a date where the answer to your question depends on physicians. They are the hardest people in the world to get into the courtroom at a fixed time.

What is so earth-shattering?

THE COURT: They could have come in any time for weeks.

MR. ZOLOTO: You did not want it. You took a certain position and you decided this case a certain way. They never asked for him to be examined. They admitted their mistake in the papers.

THE COURT: I did not tell you not to bring in doctors. I told you it was not necessary since I would assume maximum credibility but you could have brought them in any time.

MR. ZOLOTO: I asked you at the very outset at your very first decision and this record is clear, I asked either to have him examined, I turned to John Caden and asked to have him examined or at the very least have a hearing.

THE COURT: You couldn't have a hearing.

MR. ZOLOTO: You could never decide the papers based upon the evidence presented before you in my

opinion and that is why I proceeded with the 14 mandamus. I proceeded with mandamus because I thought you were wrong and yet I said you are a most able judge and a good lawyer, no question about it. I have read many times what you have written but I thought you were wrong in this case and I still think you are wrong.

It is my opinion and I make it crystal-clear, there is nothing earth-shattering about this case. Your calendar is not going to be disrupted one iota because you know and have always known and so does the federal attorney know and has always known that if the Court of Appeals or another appellate body if necessary decides that you can order this man to trial there will be no trial because he cannot go to trial. I cannot prepare him for trial and he must not take the standbecause he cannot take that risk. All it is is an aiding and abetting case. He has to take the stand. It is very simple. I have said this for a long time and I beg your Honor, what is so earth-shaking about being ready July 26th?

THE COURT: July 26th.

MR. ZOLOTO: I mean January 26th, when you know now and the federal attorney knows now that all we have is a simple or maybe very difficult question

of law, that is all we have here. I would not delay you one iota, believe me. I will estimate now and I will promise you now that should there be a ruling that Mr. Kevelson should stand trial in this case we will forthwith have to plead him.

THE COURT: Your decision to plead your defendant guilty is not binding on me. You know the federal rules as well as I.

MR. ZOLOTO: But I am telling you what we will do.

THE COURT: You know the federal rules as well as I.

MR. ZOLOTO: But I am telling you what we will do so we are not going to hold you up anyway.

THE COURT: I may not accept the plea from him. Based on what you say right now that you are pleading him guilty --

MR. ZOLOTO: If he has to go to trial --

THE COURT: Why don't you let me finish?

MR. ZOLOTO: I am awfully sorry, that is a bad habit of mine when I become engrossed in conversation, I am sorry and I apologize.

THE COURT: Not to me. I have a Reporter who is trying to keep a record and it is impossible to do so when two of us are speaking.

THE COURT: In view of the circumstances and your statement that you are going to plead him guilty because of coercion and the necessity of a Rule 11 hearing, it may lead to my rejecting the plea.

Is there going to be a plea by the co-defendant?

MR. CADEN: There is a letter to that effect I received.

THE COURT: When is that plea going to be made?

MR. CADEN: They told me it could not be made before January 26th, the date of trial.

THE COURT: Then on Monday I will get a plea there and I will have to make the same decision I make in every case. I will make a full inquiry and if I decide to accept the plea I will accept it. Otherwise, the defendant will go on trial on Monday whether he likes it or not. His decision to plead is not going to prevent me from trying the case.

MR. ZOLOTO: Providing I do not get a stay.

THE COURT: Provided you do not get a stay, of course.

MR. ZOLOTO: Quite frankly, I will say this for the record, that if I do not get a stay and I do not get a hearing and I think I am a capable lawyer, I am sorry I have to say this about myself.

THE COURT: I agree, you do not have to say it.

I would be the first to give you a certificate about your ability.

MR. ZOLOTO: I would not then know what to do because I do not see anything earth-shattering based upon what I have disclosed to the Court and the federal attorney's office months ago based on the reports that I have and based on the physicians, why it must be decided until there is a final determination. The only thing that would make me very happy is the withdrawal of those statements. I am not dilatory. What I am doing here is trying to protect his rights.

THE COURT: I respect that.

MR. ZOLOTO: And I say that to both the federal attorney and to your Honor. It is a simple question or a very complicated question. Is he or is he not able to go to trial?

I do not know what else I can say to your Honor.

THE COURT: If you want a hearing just call my Law Clerk and he will set it up at your convenience.

MR. ZOLOTO: I am saying to the Court I do want a hearing. I am saying to the Court what I am going to do, the first item on the agenda is that I am going to contact Dr. Poindexter. I am going to send Mr. Shaw to contact Rosenberg --

THE COURT: I am really not concerned about how

you are going to handle your case. All I am concerned with is my courtroom time. When you want any courtroom time call my clerk and he will set it up immediately and we will hear you.

Do you have any evidence to submit?

MR. CADEN: No, Judge, I do not.

THE COURT: The hearing is closed. It will be re-opened on request by telephone for counsel for the defendant.

MR. CADEN: I am really constrained to say one thing. I am interviewing witnesses because of my concern about a plea not being accepted on Monday. Could I possibly be given an hour or two of notice? I may be in the Bronx or Westchester County but I will be more than happy to come day, night or afternoon, but I would like to know an hour in advance so that I may leave where I am at.

MR. ZOLOTO: May I say in response for the record, John Caden and Judge Weinstein, if it is determined that Nathan Kevelson should go to trial I will do everything in my power to see that there would be a disposition so that you are not put to work. It was offensive to me yesterday for you to have to be sitting here with Stuart Shaw for five hours to do this.

I have made that representation. We are not those kind of people. We are not seeking those kind of tactics.

THE COURT: Excuse me, I do not consider dilatory tactics in that meaning. I do not criticize them. Dilatory tactics are sometimes necessary to defend your client. I have used them myself and I assume that any lawyer will use them when he believes it is necessary for his client.

MR. ZOLOTO: A statement like that was demeaning to have said to me when everything that I have done here has been out in the open and above all we have a legal issue.

THE COURT: If you took the statement as being invidious I withdraw it with apologies.

MR. ZOLOTO: Thank you very much.

* * *

ADDRESS REPLY TO UNITED STATES ATTORNEY AND REFER TO INITIALS AND NUMBER

DGT:JLC:rb

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

January 19, 1976

Honorable A. Daniel Fusaro
Clerk, United States Court of Appeals
for the Second Circuit
United States Court House
Foley Square
New York, New York

Re: Kevelson v. Weinstein, No. 76-3004

Dear Mr. Fusaro:

We have been directed to file a response, by this date, to the petition for a writ of mandamus. We believe, in light of events which have occurred subsequent to the filing of the petition, that it may be appropriate for the Court to delay consideration of the application, although we do not believe that, in any event, mandamus is an appropriate remedy.

The developments to which I refer are as follows: On January 18, 1976, the defendant Nathan Kevelson, who has never suffered a heart attack, was examined by Dr. Myron Texon, a cardiologist designated by the United States. Dr. Texon found, and is prepared to testify, that Mr. Kevelson can safely stand trial. Moreover, Judge Weinstein has scheduled a hearing to take evidence on this issue on January 20, 1976. Obviously, after the hearing, there will be a far more complete record.

We did not, perhaps mistakenly, seek to have the defendant examined earlier because Judge Weinstein indicated from the outset that he did not believe any showing had been made to warrant a continuance of the trial. We recognize now that the wiser course, to avoid eleventh hour dilatory moves by the defendant, would have been to have had him examined at the outset.

Very truly yours,

DAVID G. TRAGER
United States Attorney

cc: Hon. Jack B. Weinstein
Hyman L. Zoloto, Esq.

JOHN L. CADEN
Assistant U. S. Attorney

DEFENDANT'S HEARING EXHIBIT "A"

DEFENDANT'S HEARING EXHIBIT "B"

Dr. T: I have read this record, so I am familiar with your background and everything that has gone on up to date.

But I do have to come to my own conclusions. I will have to conduct this examination in my own way. If you, Mr. Zoloto, have any objection, you let me know, but I will have to ask the patient my own questions.

Let me tell you, Mr. Kevelson: I am going to ask you certain questions. If you don't understand my question, ask me to explain, before you answer.

Now: I know you have a number of complaints -- there may be one, two, or twenty, but they will all come out.

Before you answer, try to arrange your complaints in the order of what bothers you the most. Don't give me your least complaint first; you see, I want your worst complaint first.

Let me get some details first: 1. Name 2. Age.

3. Kind of work:

NK: I don't do any work.

Dr. T: Now you don't. What about formerly.

NK: Salesman -- on the outside.

Dr. T: Selling what?

NK: Insulation.

Dr. T: How long have you not been a salesman?

NK: Since May 1974.

Dr. T: What was the reason for stopping at that time?

NK: Well, I started to feel bad, and I could not do the driving -- my territory was on the outside.

Dr. T: When you felt bad, what was your complaint?

NK: I started to get pains of the heart [points to left front chest].

Dr. T: Remember the month?

NK: May, when it got more.

Dr. T: So you stopped work in May because of increasing pain in the left front chest.

Dr. T: I want to know how you feel now. I don't mean particularly at this moment. What is your chief complaint, in order of severity.

NK: I get a pain on the left side, which goes over the right side, a little to the back (indicates).

Dr. T: Doesn't go to the left?

NK: No.

Dr. T: So you have pain in the left front chest radiating to the right chest and the right shoulder.

How often do you get this pain that you are talking about?

NK: A few times during the day, and I take a pill.

Dr. T: What do you mean by "a few times"?

NK: In the morning, once or twice. In the afternoon, I would rest, try to sleep.

Dr. T: Let me count: How many times, on an average, during a 24-hour period, did you get pain recently?

NK: About 4 times a day.

Dr. T: What are the circumstances when you get this pain -- what are you doing when you get the pain?

NK: I get tension when I start to think---

Dr. T: You said "tension". I am talking about pain. What brings on the pain?

NK: I don't know the cause.

Dr. T: What brings on the pain?

NK: I still don't understand your question, Doctor.

NAT KEVELSON DOES NOT ANSWER THE NEXT QUESTION: Are you in pain right now? HE IS OBVIOUSLY IN PAIN.

Dr. T: Are you getting pain right now?

NK: I will have to take a pill.

NAT KEVELSON TAKES A NITROGLYCERIN PILL AND RESTS FOR APPROX. 5 MINUTES.

Dr. T: Do you have pain when you are sitting quietly?

NK: Sometimes.

Dr. T: I have to try to put your answer in your own words, so let me try to get it a little more logically: First you say you get pain when you are sitting quietly; then you say you get pain at other times.

NK: If I start to think, if I think of what is happening to me, I start to get pain.

Dr. T: What is happening to you?

NK: What I have with this here case, with my life. (2)

Dr. T: So you are telling me that thinking about the case gives you pain?

NK: No, I have more pain than originally.

NAT KEVELSON TAKES ANOTHER NITROGLYCERIN TABLET.

Dr. T: You took a pill because of pain just now?

NK: Yes, from the talking.

Dr. T: Tell me when the pain starts to improve.

DR. TEXON MAKES AN OBSERVATION THAT THE PATIENT STATES HE HAS CHEST PAIN WHILE TALKING AT THIS TIME, AND TAKES A NITROGLYCERIN PILL.

Dr. T: Are you getting any relief from the nitroglycerin tablet, Mr. Kevelson? Is it helping?

NAT KEVELSON IS OBVIOUSLY SUFFERING -- DOES NOT ANSWER.

Dr. T: Would you like a little water?

How do you feel now?

NK: If you don't mind, a few minutes I will wait...

Dr. T: You can wait as long as you want.

How long does it take for the pill to work?

NK: I don't know Doctor; I don't time it.

Dr. T: 3 seconds or 3 hours? You have had many attacks of pain according to the record, so you ought to know.

NK: It takes a few minutes.

Dr. T: You feel better now? It has been 3 minutes.

NK: A trifle better.

Dr. T: SO I WILL NOTE DOWN THAT IT TAKES BETWEEN 3 OR 5 MINUTES FOR YOU TO FIND RELIEF FROM TAKING THE PILL.

You tell me you get pain while talking. What does the talking do to you?

NK: It is heavy on my heart.

Dr. T: If somebody else talks to you, do you get pain?

NK: It is heavy on my heart.

Dr. T: Does it make a difference who talks to you?

NK: If I don't get into a discussion...

Dr. T: If I talked to you about the weather, do you get pain?

NK: A few times during the day I would get pain.

Dr T: Mr. Kevelson, try to answer my question, will you please?

NK: Yes.

Dr. T: Are you getting pain because I am talking to you about your case? If I were to talk to you about something else, like the weather, for instance, does it give you a pain?

NK: Not so much.

Dr. T: So if I talk about something ~~xkxx~~ that bothers you, you get pain.

NK: Yes.

Dr. T: What else bothers you, besides your case?

NK: If I get some sort of aggravation.

Dr. T: You get pain when you get excited?

NK: I don't have to take that excitement; I just walk away from it.

Dr. T: Whether it has to do with your case or not?

NK: I just walk away from it.

Dr. T: That is not my question: When you get excited, whether it is in connection with your case or not, do you get a pain?

NK: Yes, I get a pain.

Dr. T: LOOK HOW LONG IT TOOK YOU TO SAY THAT! [Makes a notation about it].

Dr. T: Does the pain ever go away without your taking a pill -- if you just walk away from it, as you said before...

NK: No, I have to take a pill.

Dr. T: That is a very important point, so I am repeating it: The pain doesn't go away until you take a pill, otherwise it just goes on?

NK: Right.

DR. MAKES NOTE: PAIN PERSISTS UNTIL HE TAKES A PILL.

Dr. T: How long does the pain last until you take the pill? This one lasted 4 or 5 minutes. Is it gone now?

NK: Yes.

Dr. T: What was the longest period that a pain lasted?

NK: About 5 minutes, and if I have to take a pill again, I would take it.

Dr. T: When you get a pain like this, do you feel anything else -- any other complaint, or just pain?

NK: I feel it travels along.

Dr. T: You tell me it travels. Just now you had a pain. Does anything else happen to you?

NK: No.

Dr. T: So you have no other symptoms or complaints, except the pain?

You are sure there is nothing else that goes on at this time -- pain, and that is all?

NK: Yes.

Dr. T: I can see that you are not short of breath, you did not break out into a sweat, you did not faint.

NK: I would get a cold sweat, sometimes.

Dr. T: You told me a minute ago that nothing else bothers you when you get into this situation, but now you say "a cold sweat".

NK: Yes.

Dr. T: Where?

NK: On the forehead.

Dr. T: Is there anything else?

NK: Just get a little fast beating.

Dr. T: Is it better now?

NK: No, it is beating faster.

Dr. T: When did it start?

NK: Just a little while ago.

Dr. T: How do you know that?

NK: Well, I can feel it.

Dr. T: Do you feel your pulse is faster? I know you have a pacemaker -- that should keep your heart at a steady rate. Is your pacemaker not working?

NK: No, the pacemaker is working. It will calm down.

DR. MAKES NOTATION: "I ALSO FEEL MY HEART BEATING FASTER THAN NORMAL".

Dr. T: Does that fast beating stop when the pain goes away. For instance, now, the pain, I presume, has gone away; the sweat is gone. What about the beating?

NK: Not yet.

Dr. T: How long does it take for the beating to subside? Is it gone now?

NAT KEVELSON DOES NOT ANSWER the question.

DR. TEXON GOES OVER TO MR. KEVELSON AND FEELS HIS PULSE.

Dr. T: Is the heart beating fast now, as far as you know, Mr. Kevelson?

NK: It is letting up a little.

Dr. T: Was it feeling fast before I held your pulse? Your pulse is 72-76 per minute, which is pretty normal. How do you feel?

NK: I feel back to normal.

DR. TEXON NOTES: THE PATIENT IS BACK TO NORMAL -- TO USUAL STATE.

Dr. T: What is the second thing that bothers you? Do you have another complaint besides pain?

NK: At this moment, nothing.

Dr. T: Let's take the last 24 or 48 hours. Do you have any other complaint besides pain?

NK: No, I don't go out of the house because I get a "short" in walking; I get a chest pain.

Dr. T: Mr. Kevelson, you have been sick now, for many months. What else bothers you besides the pain?

NK: The only thing that bothers me, if I start to think about the case that I have.

Dr. T: If it were not for the pain, you would be a well man?

NK: I would be a well man, if not for the heart; I imagine so.

Dr. T: You would be a normal fellow, just like anybody else?

NK: I hope so. Can I tell you that I would be a perfect man?

Dr. T: When did these pains start? Think carefully -- I have to know when it started for the first time. When did you first notice it?

NK: It bothered me in 1974.

Dr. T: You remember the month?

NK: In May.

Dr. T: Is that the same time that you stopped working, that you told me before?

NK: That is why I stopped working, because I started to have the pain. (6)

Dr. T: Was that before or after the pacemaker?

NK: The pacemaker was put in afterwards.

Dr. T: You had pain beginning in May?

NK: Yes.

Dr. T: The other doctors you visited asked you the same question--because I have the record here -- and, to one of the doctors you said you had no pain until the pacemaker was put in.

NK: Why was the pacemaker put in?

Dr. T: That is for the doctors to decide.

NK: I had a pain before, but I didn't think of the pain. I went along to the doctor.

DR. T: So what one of the doctors wrote here is wrong?

NK: No.

Dr. T: Can you tell me what is the right story?

NK: I assume what the doctor has there is the right story.

Dr. T: In other words, what you told me before is wrong -- that you had pain in May.

DR. NOTES: "THE PAIN BEGAN IN MAY 1974. NOW I CHANGE MY STORY AND STATE THAT THE PAINS BEGAN AFTER THE PACEMAKER, IN JULY 1974."

Dr. T: It was only after the pacemaker, that you began to use the nitroglycerin for pain?

NK: That is right.

Dr. T: Try to think back, Mr. Kevelson: July 1974 was bout 18 months ago. Now you state you would have about 4 attacks of pain a day. Did you have 4 attacks of pain a day before?

NK: How can I remember? How can I state that, doctor? Back before I didn't have so many pains as I have now.

Dr. T: The average number of pains is 4 a day. So there was a time when you got one pain a day, or 2 a day.

NK: I cannot remember exactly -- whether I had one or two.

Dr. T: Did you have 4 a day

NK: I may have had more than four, doctor.

Dr. T: So you want to change what you said before -- that you have an average of four?

NK: That is what I have now.

Dr. T: What is the maximum attacks of pain that you have within 24 hours?

NK: When I said four, I told you during the day, not 24 hours.

Dr. T: You get some pain at night?

NK: Sometimes at night.

Dr. T: How many times at night?

NK: About once or twice at night.

Dr. T: Whileyou are in bed?

NK: Yes, I get the pain and sit up.

Dr. T: Does the pain wake you up?

NK: Yes.

Dr. T: Think back: Was it always the same?

NK: It was less before, it is more now.

Dr. T: Was it gradually increased?

NK: It is more now.

Dr. T: And six is the maximum number of pain attacks you get?

NK: Yes.

Dr. T: And all these pains are about the same, and you take the nitroglycerin, and it helps?

NK: Yes. And I take the other pill that I have.

NAT KEVELSON SHOWS DR. TEXON THE MEDICATION.

DR. TEXON NOTES: "ALL THE ATTACKS ARE BOUT THE SAME, AND I TAKE THE NITROGLYCERIN, WITH BENEFIT. I ALSO TAKE MEDICATION REGULARLY: INDORAL & ISORDIL during the day, as well as LENOXIN".

Dr. T: Which one do you take if the pain goes to the right side?

NK: I take an additional ISORDIL and INDORAL pill if the pain goes to the right side.

Dr. T: Does the pain never go to the back or the shoulder or any place down?

NK: From the pacemaker I get a little pain on the [left] side, which I think is because I am laying on my left side.

Dr. T: But the main radiation is to the right. Let's leave it at that.

NK: Yes.

Dr. T: What else bothers you?

NK: The more pain that I get when I start to think about my case.

Dr. T: Well, I know emotional strain or stress causes the pain.

[HLZ: Don't you have the right to question him whether he has shortness of breath?]

Dr. T: Suppose you started to walk down the street, what would happen?

NK: If I walked about 5 or 10 ft, I will stop.

Dr. T: Because of?

NK: Because I am afraid I will get a pain, because in this cold weather...

Dr. T: How about in normal weather?

NK: About 20 - 25 ft. I walk very slow, because if I walk fast...

Dr. T: What happens?

NK: I get a shortness of breath.

Dr. T: What comes first: the shortness of breath or the pain?

NK: I feel them coming together.

Dr. T: Can you cross the street, which is about 40 ft.?

NK: I try to avoid crossing the street.

Dr. T: How can you avoid crossing the street?

NK: If I walk very very slow, I can walk 40 - 50 ft.

Dr. T: How far can you walk before you get pain: a block, or half a block?

NK: Doctor, I just don't try it.

Dr. T: How many stairs can you walk up?

NK: I go up a step and rest, a step and rest.

Dr. T: Can you go up 2 steps?

NK: I go up step by step.

Dr. T: So you go up the steps with 2 feet on each step?

NK: Yes.

Dr. T: How many steps can you go up?

NK: I go up 6 steps, because then it is a platform, and I stop.

Dr. T: A flight of stairs is about 15 steps.

NK: I am talking about my house.

Dr. T: Why do you stop?

NK: I get shortness of breath.

Dr. T: Not because of pain?

NK: If I have pain, I don't go to walk.

Dr. T: When you get to the top, do you rest?

NK: Yes.

DR. T: How about walking around in your own home?

NK: Going to the front room, to the bedroom. I don't walk.

Dr. T: You don't walk? Do you have a wheelchair at home?

NK: No.

Dr. T: Suppose you walk from this room to this [indicates the rooms in his office]...

NK: No.

Dr. T: If you walked the 4 rooms, you would have shortness of breath?

NK: If it would be 20 - 25 ft, I would not get shortness of breath.

Dr. T: No, this would be about 40 ft.

NK: The whole width of my house is about 27 ft.

Dr. T: Any other complaint you want to tell me about, with regard to your sickness?

NK: No.

Dr. T: There is nothing?

NK: No.

Dr. T: Do you remember your sickness before they put in the pacemaker? What you complained of -- spells?

NK: I thought I would have some trouble with the prostate.

Dr. T: That, I have in the record. It is not connected, really. What other symptom related to your heart?

NK: Nothing.

Dr. T: But the doctors reported that your heart was slow. You were not aware of it?

NK: No.

Dr. T: So it bothered the doctors that your heart was slow, but it didn't bother you.

NK: I thought I felt well. The doctors were saying: "slow down"...

DR. NOTES: "BEFORE THE PACEMAKER WAS INSERTED IN JULY 1974, I FELT WELL, DESPITE THE FACT THAT SEVERAL DOCTORS EXAMINED ME AND TOLD ME I HAD A SLOW HEART".

Dr. T: You didn't faint, didn't get any unconsciousness or feel dizzy.

NK: Well, if I had any pain, I probably didn't understand it.

Dr. T: But, if you fell down on the street, unconscious, you would know about it!

NK: That is right. That is why the doctors prevented all that. That is what we have doctors for.

Dr. T: I am putting this in your own words: "I SUBMITTED TO THE PACEMAKER SURGERY UPON ADVICE OF MY DOCTORS. SINCE THEN, I HAVE DEVELOPED THE CHEST PAINS AND SHORTNESS OF BREATH THAT I DESCRIBED EARLIER".

Dr. T: Past history includes Paget's Disease. It is a bone disease, which doesn't give you any symptoms.

NK: No.

Dr. T: What about the gout?

NK: I wouldn't eat food that you bring it on.

Dr. T: What about high blood pressure or kidney disease?

NK: No. But I had a gall bladder taken out.

Dr. T: When was that?

NK: At age 58.

Dr. T: What about your weight?

NK: 185 - 189 lb.

Dr. T: What was the most you ever weighed?

NK: 224 lb.

Dr. T: When was that?

NK: Prior to taking the gall bladder.

Dr. T: Do you take a special diet for your gout?

NK: I watch myself.

Dr. T: What do you mean "watch myself"?

NK: I don't eat any tongue or red meats.

Dr. T: Any other things you avoid?

NK: No fatty meats.

Dr. T: Do you think you are overweight now?

NK: About 10 - 12 lb.

Dr. T: Do you have any pain right now?

NK: No. At this moment I feel normal, but the next couple of minutes I don't know.

THE ABOVE COLILOQUY LASTED FROM 11:00 - 12:25 AM.

DR. TEXON THEN TAKES MR. KEVELSON TO THE ANTE ROOM AND ASKS HIM TO STRIP TO HIS WAIST.

NAT KEVELSON TAKES ANOTHER NITROGLYCERIN PILL. [TOTAL OF 3 PILLS TAKEN SO FAR]

Dr. T: Is something wrong now? What makes you take the nitroglycerin pill?

NAT KEVELSON DOES NOT ANSWER. HE IS JUST LEANING AGAINST THE REFRIGERATOR WITH HIS HEAD BURIED IN HIS HANDS. THE DOCTOR GOES OVER AND HELPS HIM TO THE EXAMINATION TABLE.

Dr. T: You have pain now? Is that from excitement. Do you feel this way because of excitement or pain? Or don't you know?

I am glad you took the pill, but tell me why?

NK: As I started taking my shirt off, I felt a little dizzy.

Dr. T: Are you better now? Did the pain go away? You are not sweating, nor short of breath.

TAKES HIS WEIGHT: 191.5 lb.

STARTS TAKING HIS BLOOD PRESSURE.

Dr. T: When was the last time you saw your regular doctor -- Dr. Rosenberg?

NK: I saw him in December, and I have to see him again.

Dr. T: How often do you see him?

NK: I see him every 4 - 6 weeks. If I feel bad, I see him before.

Dr. T: When was the last visit?

NK: Dec. 16th.

Dr. T: How does your heart feel now: fast or slow or normal?

NK: I feel a little fast.

Dr. T: You've had a lot of blood tests in the past, haven't you?

Dr. T: ... [Question not audible]

NK: I told the doctor, and he said it might be arthritis.

THEN TAKES NAT KEVELSON INTO THE RADIOLOGY ROOM FOR AN X-RAY AND ELECTROCARDIOGRAM.

Dr. T: I am touching your belly. Do you feel any pain when I touch it?

NK: No.

Dr. T: Is it a nerve rash?

NK: I don't know.

Dr. T: What did the doctor say it was?

NK: I know what it is. If I just don't scratch it...

Dr. T: Do you have shortness of breath now?

NK: Yes, a little.

Dr. T: You don't look like you are short of breath. You are breathing normally. Why do you say you are short of breath?

NK: I just take an extra breath.

DR. TEXON MAKES NAT KEVELSON FOLLOW HIM, WALKING THROUGH 2 OF THE ROOMS, THEN COMES BACK TO HIS DESK.

Then follows a coliloquy about Judaism -- Yeshivas, Mikvahs, etc.

Dr. T: I see that when we talk about Jewish subjects, or pleasant subjects, that interest you, you seem to be okay, you get no pain.

FINAL COMMENT BY DR. TEXON:

THIS IS A VERY DIFFICULT PROBLEM. I AM GLAD THAT I DON'T HAVE TO DECIDE IT, THAT THE JUDGE IS GOING TO MAKE THE DECISION!

A 201

MEMORANDUM

Below referenced Findings and Opinion of Dr. Myron Texon were given to Assistant U.S. Attorney John L. Caden by telephone on January 19, 1976 at 1:00 P.M.

CONCLUSION

(1) This patient has a arterial sclerotic heart disease due to coronary atherosclerosis. He has a demand pace-maker implant.

(2) He is subject to episodes of chest pain, anginal syndrome precipitated by physical effort or emotional stress.

(3) The episodes of stress or exertion during the past 18 months have produced up to 6 attacks a day, but no evidence of congestive heart failure or miocardial infarction has resulted to date.

(4) Coronary atherosclerosis is a progressive, pathological condition which is present and inherent in all individuals to different degrees depending on the hydrolic specifications of each person's coronary circulation. It is not influenced in its pathological course by external factors such as exertion or emotional stress.

(5) Exertion and emotional stress can precipitate chest pain due to anginal syndrome but this is a reversible physiological manifestation which reverts to status quo

DEFENDANT'S HEARING EXHIBIT "C"

ante when the effort or emotionally stressful environment or situation is removed.

OPINION

The natural course of coronary atherosclerosis cannot be predicted with unfailing accuracy in any individual, including this patient. The clinical course may be relatively stationary for long periods as shown in this case. It may be rapidly progressive and it is also subject to sudden and dramatic changes - even sudden death.

The course of this patient's coronary artery disease, atherosclerosis, has been stationary or slowly progressive to date (for 18 months). No evidence of congestive heart failure or pre-infarction syndrome has been present.

I believe that this patient's participation in a court proceeding will be stressful and lead to episodes of chest pain due to anginal syndrome with relief by proper medication, nitroglycerin. I do not believe the chest pains in themselves will cause a miocardial infarction. This will come, in my opinion, from the further development of his antecedent and progressive occlusive atherosclerotic disease.

I believe it is possible but very unlikely that a fatal

arrhythmia such as ventricular fibrillation will occur in this case as a result of participating in a court proceeding because the miocardium has not shown evidence of failure (congestive heart failure) and no miocardial infarction has occured in this patient.

.....

There is no intent in this report to predict with perfect accuracy the future course of this patient's illness. The Court may find sufficient medical data in this presentation upon which to make its decision.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

against :

NATHAN KEVELSON, : 74 CR 370

Defendant :

----------x

United States Courthouse
Brooklyn, New York

January 23, 1976
10:30 a.m.

B e f o r e:

HONORABLE JACK B. WEINSTEIN,

U.S.D.J.

SHELDON SILVERMAN
Official Court Reporter

Appearances:

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: JOHN CADEN, Esq.
Assistant U.S. Attorney

HYMAN L. ZOLOTO, Esq.
Attorney for Defendant

THE CLERK: United States of America versus Nathan Kevelson.

MR. ZOLOTO: If the Court please, I have been on the telephone at about 8:15 this morning. Nat Kevelson was not able to attend this morning. He had a slight sore throat but the weather was severe and he had a rough night.

I'm told from him that I would appreciate it if your Honor would suspend with the rule for this hearing that he be present.

THE COURT: Yes, of course.

MR. ZOLOTO: Secondly, I am very grateful to Mr. Secular, who has afforded me this opportunity to come in this morning when we called for the appointment.

THE COURT: You mean my law clerk.

MR. ZOLOTO: Mr. Secular--

THE COURT: He was my law clerk.

MR. ZOLOTO: Stewart Shaw always takes care of that with your people, and I have to ask who I call and Stewart Shaw was before a grand jury for me, so I didn't know who the right person to call would be.

THE COURT: It was my decision, however.

MR. ZOLOTO: Yes, you afforded me--

I want to make this crystal clear on the record: You have afforded me this opportunity.

I come before your Honor this morning to make a further application for a very short continuance because I can tell you now Charles Poindexter -- I'm first going to submit to you my affidavit, his affidavit, and his report to Dr. Texon to have, please, marked.

THE CLERK: So marked.

MR. ZOLOTO: I have given John Caden a copy of the papers.

I have taken the position that to me it does not make any difference of burdens of proof et cetera. The Government has agreed to produce Dr. Texon.

I have also said to this Court I want him here. I would subpoena him here.

John Caden, in a telephone conversation with me -- and I can't represent the accuracy of the date of the telephone conversation, but I will accept his word -- it was either Wednesday -- it wasn't yesterday, I believe it was --

MR. CADEN: It was Thursday.

MR. ZOLOTO: Was it yesterday? I'm sorry, it was yesterday.

That Dr. Texon is out of town, that he's writing some papers, and he does that to get away from New York, and so I couldn't get him here because if I got him here, I would start the hearing forthwith, with Dr. Texon, in spite of lawyers' feelings, et cetera, because I strongly feel the only issue before the Court, and the courts, if necessary, is whether or not Mr. Kevelson can stand trial in this case.

I can tell your Honor I was in Charles Poindexter's home last night, because I had to obtain his signature to the report that he dictated in the affidavit. The testimony will come out that Al Kevelson will not live beyond the year.

MR. CADEN: You mean Nathan.

MR. ZOLOTO: I always make that mistake, and I have to apologize.

I also have been told that Dr. Texon's report by whom I consider the most eminent cardiologist, maybe in the world, Nathan Texon's report is either stupid or a fraud. I want him -- I have no signed report from Dr. Texon.

I want to examine him and I want to ask him the questions. I want to elicit from him certain data upon which he makes the finding and he also

took notes, based upon what was told to him, on the basis that he wrote.

It is not reflected in his report and the significance of those notes.

I also intend -- my office called the secretarial service. The secretarial service has said to me, to my office, that for some reason they won't be able to obtain a finished copy of the minutes before three o'clock.

I have brought Mrs. Voss(phonetic), who is a paralegal. She will take the bar in either '76 or '77, I don't know which -- just to take notes, so that I would honestly and honorably be able to state--if I have an adverse ruling here, I'm going to the Federal Court of Appeals for a more complete--

THE COURT: When will you be ready?

One thing I realize, the weather is cold, and, of course, I don't want the defendant to come out in such cold weather, so I would, in any event, have granted an adjournment until the weather was milder.

MR. ZOLOTO: I want to say this--

THE COURT: Excuse me.

MR. ZOLOTO: I have that bad habit, which you're going to correct me eventually about that,

and I admit I have it.

THE COURT: It's not my function to correct you.

I understand from the weather reports that it may continue to be cold through the early part of next week. Now, Tuesday is the motion day at the Court of Appeals. I have no objection to giving you an adjournment, putting the case on for Wednesday, if that would not inconvenience the Government, but we have got to bring this to a head. I have a whole calendar here. I have all kinds of criminal cases and civil cases. I can't keep pushing this thing off because you can't produce the doctors.

MR. ZOLOTO: I can. Charles Poindexter, who has been ill, canceled the appointments, to get a report. "Leaving my office Monday," he says. "I'll be out here for how long it takes," from his office, with his chauffeur to come here.

THE COURT: When do you want a hearing?

MR. ZOLOTO: I'm ready to have a hearing starting Monday.

THE COURT: Do you want me to put you on for ten o'clock Monday?

MR. ZOLOTO: I can't Monday because Monday

at ten o'clock I'm not going to have Texon because Texon is coming in I understand Monday night.

MR. CADEN: That's correct.

MR. ZOLOTO: Rosenberg says to me--

THE COURT: Are you going to put anything on on Monday?

MR. ZOLOTO: Yes. What I'm going to do is this: I then will start with Charles Poindexter.

THE COURT: What time do you want?

MR. ZOLOTO: He will be here how long it takes from 61st Street between Lexington and Park to get to your courtroom.

THE COURT: What time do you want on Monday so I can schedule it?

MR. ZOLOTO: I would say -- Would you say three o'clock is a fair and reasonable time?

THE COURT: Put it on at three o'clock.

MR. ZOLOTO: For a doctor.

THE COURT: When are you going to put your other doctor on?

MR. ZOLOTO: Dr. Rosenberg, I am waiting for a report from one of his sons who is a rabbi and conducts services in the morning, is supposed to pick up a report from Dr. Rosenberg, which I wanted to submit as part of the evidence. Dr. Rosenberg

says to me, I first heard from him on Thursday, that's the way doctors called me back. He says, "With such short notice I can't be available Monday. I have these commitments."

THE COURT: When can you have him here?

MR. ZOLOTO: He hasn't given me an answer, but says he will give me an answer. That's the best I can tell you.

THE COURT: When are you going to have Texon here?

MR. ZOLOTO; He'll come in Monday night. The Government has said to the Court of Appeals, "We'll produce him."

Will you produce Dr. Texon?

MR. CADEN: I told you all the time I would.

MR. ZOLOTO: Would you produce Dr. Texon, when?

MR. CADEN: Texon should be here Tuesday.

THE COURT: Tuesday. They'll have their doctor Tuesday at ten o'clock.

MR. ZOLOTO: Dr. Texon at two o'clock.

THE COURT: Ten, ten o'clock or whatever. By that time I'll know the Rosenberg schedule. I can't keep putting it off. Tuesday, as I understand it, is motion day in the Court of Appeals, isn't it?

MR. CADEN: I don't know, Judge.

THE COURT: You see my -- I'll tell you the problem I have. It's costing a thousand dollars a day to keep this courtroom going. I have a whole panel of jurors coming in Monday, which is over one hundred jurors, at $20 a day, plus the cost of transportation, and I simply can't keep putting off the case. One thing we could do, I suggested to you, is choose the jury Monday, choose the jury Monday morning. We don't even need the defendant for that, if he wants to waive, or he can be here. That's up to him. I can send the jury home and have them come in Wednesday to begin the trial if the Court of Appeals doesn't stay it. Or if I decide the case should not go ahead.

If I can choose a jury, I only have to bring in sixteen or fourteen people rather than a hundred people, and the savings to the Government is enormous. I just can't push all these citizens around because of this one case.

MR. ZOLOTO: May I say this to your Honor, please. There's only one issue with Nat Kevelson. Can he or can he not stand trial in this case? Most respectfully, to your Honor, and the best way I can express it, to me there are no other problems. All

this is not necessary. You're either going to be right or I'm going to be right, and again most respectfully to your Honor, the Court of Appeals will decide it if I have an adverse decision from you.

I think it's very, very, very clear. All right?

THE COURT: You're suggesting he's going to take a plea?

MR. ZOLOTO: Why should we have to, and why should all this be done--

THE COURT: I don't know whether even if he offers a plea I'll take the plea. He may have to go to trial.

MR. ZOLOTO: May I respond to that? May I respond to that? As an officer of this court, I'm practicing law for more than thirty-five years, I represent to you that I have sufficient talent and between all of us, he won't have to go to trial. I will abide by a final determination and I know your Honor will abide by a final determination because under our system we have to.

All this is not necessary. I'm not dilatory. I'm not trying to kid anybody. I feel very strongly about this man's rights and anybody's rights under these conditions, under any circumstances, no matter

what.

I have indicated before, and I had a right to make that statement -- which is always hearsay -- that Nat Kevelson will not live for more than two years.

Last night it was very sobering -- and I'm telling you this as an officer of the court -- this is the first time I was in Charles Poindexter's home -- I needed the signatures and the notary -- I know who he is very thoroughly -- I will never forget the expression when he said, "Poor Nat Kevelson," to me, that led to a further discussion. It led to a further discussion about Dr. Texon that I don't want to now disclose. That's why I wanted to make statements under oath. We don't even have a signed report from him.

I said, "Doctor, I appreciate all you can do is give me an educated guess, but yours would be more scientific than mine. In your opinion, how long has he got to live?"

I'll tell you why I asked that question -- not for the Court. I've had sleepless nights because there's a question in Hy Zoloto's mind, "Am I doing anything to this poor man to hurt him when I am engaged in this argument, confrontation,

or decision-making, whatever you call it, under all of these circumstances?"

Secondly, am I doing the wrong thing to his family?

Just as you said in this courtroom, which I disagreed with, it was only you that can make a decision no matter what the evidence shows.

I have a great problem. I have to make this decision, too, if I, seriously, even medically, if I curtail his life style or if I encourage something.

Charles Poindexter in this opinion writes very strong language. He says a thrombosis is now impeding.

Statements were made to Dr. Texon, I introduced them the last time on a voir dire, that Mrs. Vaz took. It was true he doesn't express himself like a doctor, but he talked about certain things happening to him. This was completely disregarded by this fellow, can't be medically, you see.

I have taken too much of your time.

THE COURT: It's a pleasure to hear you.

MR. ZOLOTO: I understand.

THE COURT: I have a sentence.

MR. ZOLOTO: You understand my position.

THE COURT: What do you suggest we do with this case?

MR. CADEN: I have a very simple suggestion, that is, to try the case.

THE COURT: That was my suggestion.

MR. ZOLOTO: It's not going to move me in any way to try the case, but it's so foolish.

THE COURT: Why don't we select a jury Monday and then I'll let the jury go home until Wednesday and you can have a chance to go and make your motion in the Court of Appeals.

Is Tuesday motion day in the Court of Appeals?

MR. ZOLOTO: I believe the first thing they are going to do today -- and I, leaving here, have another appointment -- I have others who are handling and running around for me --

THE COURT: When is motion day?

MR. ZOLOTO: I think--

THE COURT: Does anybody know when motion day is in the Second Circuit?

MR. ZOLOTO: I think application is going to be made today for a stay.

THE COURT: You have to have it by Tuesday. Why don't we choose the jury Monday, because I have a whole panel coming in. Chief Judge Irving Kaufman

is properly concerned about the cost of juries. We all are concerned.

MR. ZOLOTO: I am saying to your Honor--

THE COURT: Why don't we choose the jury and then I'll send the jury home, bring them in Wednesday.

MR. ZOLOTO: I'm saying this to your Honor: Don't you agree, so that I'm not tied up, you're not tied up, there's nothing earth-shattering about your calendar or my calendar or his calendar that somehow or other this case is going to be decided with quick dispatch because I'm making that representation to you.

THE COURT: But I have to make that ultimate decision. I may not take a plea.

MR. ZOLOTO: Isn't it then that money should be spent, lawyers should be tied up--

THE COURT: I have a whole panel coming in Monday because the case was scheduled for trial months ago.

MR. ZOLOTO: The case was scheduled for trial months ago?

THE COURT: This Monday was set for trial months ago.

MR. CADEN: In August.

MR. ZOLOTO: Oh, oh, but there can't be a trial. There won't be a trial if there's a final determination. I'm certain of that. I'm certain that your Honor will so rule. I'm not impressed with that. I don't think you're impressed with that, and I respect you very much.

THE COURT: What are we going to do with the case?

MR. ZOLOTO: What you should do--

THE COURT: I can't bring a panel in twice.

MR. ZOLOTO: You don't have to because what you should do -- and I have talked at length with John Caden --

THE COURT: Excuse me. Have you made an application in the Court of Appeals for a stay? The case is set for trial Monday. This is final.

MR. ZOLOTO: We're doing it now with this new record, and what is happening here, we're going to do that, this, today, o.k.?

THE COURT: Based on your present statement that you will be making an application--

MR. ZOLOTO: Today.

THE COURT: --for a stay, which, I understand it, will be heard by the Second Circuit on Tuesday, when they hear motions--

MR. ZOLOTO: I thought it would be heard today, even.

THE COURT: Maybe.

MR. ZOLOTO: I did. I've been taking that for granted, you see.

THE COURT: You may be right.

I'll put the case off for trial until Wednesday, but I can't give you any further adjournments. This case has been set for trial since last August.

MR. ZOLOTO: I'm also saying--

THE COURT: And this defendant's physical condition, based on all the material before me, has not appreciably changed since last August, remains more or less what it was.

MR. ZOLOTO: The issue will be whether you're right or I'm right, simple as all that.

MR. CADEN: We're going to pick a jury on Monday, Judge?

THE COURT: Counsel for defendant insists that he can't pick a jury on Monday.

MR. ZOLOTO: I can't.

MR. CADEN: I think we should, because I would like to say something. I sat here for a week and I haven't said a word. I think I should say something: that is, there are witnesses from Florida

who are over sixty-five. There are witnesses from Ohio who have canceled business trips. There are witnesses--

THE COURT: Are they coming in?

MR. CADEN: They are coming in. Let me say something else, because I have to get it off my chest. As far as Dr. Texon is concerned, I kept him in New York on Wednesday. We came here Monday. You said Tuesday at 9:30. I asked Dr. Texon to stay in New York as long as possible. When Wednesday evening came about, he came to my office.

I told him, "If you want to leave to do the writing upstate New York," he should do it.

It's simply this; I would like to know where I stand.

MR. ZOLOTO: It's simple.

MR. CADEN: Excuse me. I have thirty witnesses who I am for all practical purposes a travel agent at this point. I would like to know if we can pick a jury and expedite this case.

MR. ZOLOTO: John Caden, we're going to have a hearing completed, if I don't get a stay on or before Wednesday, is that a fair statement, if you bring in Dr. Texon Tuesday morning at ten o'clock.

THE COURT: Dr. Texon apparently was available

for a hearing all last week.

MR. CADEN: He was available Monday through Wednesday. Let me say I asked Mr. Zoloto yesterday and I told him his address, and I don't think I had his phone number, as to where he was if he wanted to subpoena him. I kept Texon here through Wednesday.

MR. ZOLOTO: You never told me where he was. He was in upstate New York, but that's immaterial.

MR. CADEN: I am telling the Court I kept Dr. Texon in New York from Monday to Wednesday night. I told him he may as well leave because I haven't heard when the hearing was to be conducted. It's simply this: I would want to pick a jury.

MR. ZOLOTO: That's not going to move me. I made it clear to John Caden and everybody else. It's a useless act. This case must be decided on whether Nat Kevelson can stand trial. That is not going to move me in any manner, shape or form.

THE COURT: You mean if I tell you to pick a jury Monday you won't be here?

MR. ZOLOTO: No, that's not my style. You won't see me in those type of situations.

THE COURT: Why not pick a jury Monday so I can save the Government the cost of bringing in

all these people. It takes less than an hour to choose a jury.

MR. ZOLOTO: I'm not impressed with that argument, most specifically I'm not impressed with his argument, so I'll tell you why: because it was agreed way back in August of 1975 that the very first thing that I would do on behalf of Nat Kevelson, as I thumbed through the file, is to make a motion for a medical search, but in my office those motions will only be made if they can be made--

THE COURT: But this is 1976.

MR. ZOLOTO: I was absolved for fifty days, you know that, o.k.

You have stated on the last record and he stated on the telephone, although he wrote to the Court of Appeals and apologized to me that I was never dilatory.

Now I'm telling you now that that issue has to be decided and it has to be decided with finality. Now, if your Honor feels, after the hearing what is so earth shattering here and it won't be a decision with finality after the hearing and I will not be pressured whether a jury is selected or evidence is submitted, because you have to decide that issue and that's the only issue in the case. If your Honor feels -- let's say by Wednesday, for the sake of

argument, or the end of Tuesday, that a jury should be selected, so be it. There is no motive and no reason to pick the jury--

THE COURT: You don't understand.

MR. SOLOTO: I understand quite well, your Honor.

THE COURT: If I don't choose them until Wednesday, I have to bring that whole panel again at great cost to the Government and at great inconvenience to all these citizens. I think we'll choose a jury Monday morning and I'll send them home and give you a continuance until you can get a stay up until Wednesday. Put it--

Are you going to be here at three o'clock?

MR. ZOLOTO: I'll be here throughout their medical hearing.

THE COURT: Excuse me, I don't want you to come in twice unnecessarily. I suggest you be here at two. We'll choose the jury at two and then we can let the jury go home and we'll have the medical hearing at three, so you won't have to come in twice.

MR. ZOLOTO: I'm going to make one further request, Judge.

THE COURT: If you want the defendant here, he can be here or he can waive his presence at the

choosing of the jury; it's not necessary.

MR. ZOLOTO: I want to make one further request, so I might not have to make that on Wednesday. I think all doctors agreed the tension aggravates the condition at this time. I will be guided by Dr. Poindexter as to whether or not the defendant should be sitting at the hearing while testimony is adduced, as to -- about his longevity.

THE COURT: We can have that in chambers.

MR. ZOLOTO: I'm going to ask your Honor's permission to excuse the defendant--

THE COURT: We'll do it any way you like, chambers or courtroom.

MR. ZOLOT: Excuse the defendant. I don't want him to hear that.

THE COURT: I told you I would cooperate with you fully. You know I will.

Monday at two o'clock we'll choose the jury. At three o'clock you'll have your witnesses here, and we'll proceed promptly, bearing in mind that unless the Court of Appeals stays it Tuesday afternoon, we're going forward Wednesday.

Is that satisfactory to the Government?

MR. CADEN: Most satisfactory.

We also have Al Kevelson. We have him

scheduled for 9:30 for disposition. Should we keep that?

THE COURT: Of course, we'll take care of that.

MR. ZOLOTO: I'm making this clear for the Court now that if a disposition is adverse to me -- and I don't use that in any form of threat, and I think you know that -- that I'm going to seek a judgment of finality.

I am also making a representation to this Court -- I'm familiar with Rule 11 -- and I think John Caden is familiar with what we talked about -- that if there is a final determination that this man can stand trial, I think it's just a waste of time that we're discussing all this, because I cannot prepare him for trial, and I have no right to prepare him for trial. It's as simple as all that.

THE COURT: Thank you very much.

Nice seeing you.

MR. ZOLOTO: We don't need any--

THE COURT: Thank you very much.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-370

NATHAN KEVELSON, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

January 26, 1976
2:00 o'clock p.m.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

HENRI LEGENDRE
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JOHN CADEN, ESQ.
Assistant U.S. Attorney

HYMAN L. ZOLOTO, ESQ.
Attorney for Defendant

THE COURT: The Government request for the voir dire will be Court Exhibit 1.

Does the defendant have any written request on the voir dire?

MR. ZOLOTO: No, your Honor. I am now going to submit an affidavit waiving his right to having any double jeopardy so that we'll have a meaningful determination.

THE COURT: Mark this as Court Exhibit 2.

THE CLERK: So marked.

MR. ZOLOTO: My office was informed this morning, and I make the representation even though my office made it to me, that Dr. Rosenberg can get here Wednesday at ten o'clock. He has to get substitute doctors for the patients in the hospital and I okayed it on the telephone. I've been a pretty busy fellow.

THE COURT: 10:30 Wednesday?

MR. ZOLOTO: What I have done, I have given Mr. Caden a copy of his report so he would be prepared and I am submitting an original of Dr. Rosenberg's to the Court.

THE COURT: The Clerk will mark this as defendant's Exhibit A.

THE CLERK: So marked.

4

MR. ZOLOTO: Secondly, I would like to make the request for a Court Reporter to be made available, particularly with respect to the hearing, so that we can immediately -- and that's only a respectful request so that we could immediately get the transcript and pass it on to the Court of Appeals. I think you were right about Tuesday, that's what my people tell me.

THE COURT: If you want instantaneous arrangements of receiving transcripts the Court Reporters will be happy to cooperate.

MR. ZOLOTO: I ask the Court to assist me in any manner, shape or form.

THE COURT: You won't need any assistance. Arrange it with the Reporters.

MR. ZOLOTO: Now, what we have, we have Texon testifying tomorrow; Poindexter testifying at 3:00 o'clock today or sooner should he arrive, and we have Rosenberg testifying Wednesday morning at 10:30.

Now, in the interest of justice, I respectfully make this application: Why can't this case be put over so the Court of Appeals can have a full and complete first record?

Firstly, with respect to mandamus, and second, whether or not the defendant should go to trial, or to be tried. If the Court feels that this cannot be done,

then what we'll do, we'' submit an imperfect record, then we'll further thereafter submit the record as best as we can.

I also will state for the record, I will consent to waiving Mr. Kevelson's appearance in accordance with our discussion on Monday. He's still throaty anyway. What we did the Sunday he was examined was that real cold Sunday, and I didn't want to postpone that, either, that examination, so he's a little under the weather, slightly under the weather. We don't want to fool with that condition of his in any manner, shape or form.

MR. CADEN: I have one or two things to say.

MR. ZOLOTO: I am sorry I approached the bench but it's easier for me to do that rather than speak out loud.

MR. CADEN: Perhaps I misunderstood the Court on Friday. My impression was, if the weather was permitting, the cold weather --

THE COURT: Are you feeling all right?

MR. ZOLOTO: What happened was Stewart Shaw should have carried that heavy valise around.

THE COURT: What's the matter with that young lady? She looks strong.

MR. ZOLOTO: Men don't usually do that, even

with my wife, very sensitive.

THE COURT: That's why more men get heart attacks than women. The Equal Rights Amendment will cure that.

MR. CADEN: I did want to say it was my understanding from the court order on Friday, if the cold weather had gone and nice weather had come it would not prevent the defendant from coming, his attendance was deemed to be necessary. I thought the Court was saying, if the weather continued as poorly as it was last week, and because of some physical abnormality, on those conditions we do not have the defendant present. I'm concerned that the defendant where the weather is nice and there is no explanation as to his physical condition, just not showing up, especially for picking of a jury.

THE COURT: I won't swear the jury until Wednesday.

MR. CADEN: I have no problem with that.

MR. ZOLOTO: The issue is not the swearing of the jury. I am not discussing that, but there were statements made, I have a copy of the minutes. There were agreements made and I also understand that the Court can change its mind for any reason whatsoever. I'll abide by whatever the Court does. However, it was

also a further discussion in our colloquy that with respect to the medical hearing I am guided by what doctors tell me and my own knowledge, because I am a cardiac case, third time; that in our colloquy, and if you remember Mr. Caden, the Court stated that it would not be necessary for him to be at the hearing as to evidence or statements that would be adduced, and the voir dire that I will go into, however, should the Court decide differently, and should he be able to attend, and we are not seeking for him not to attend. It's not our style, I made that crystal-clear. I have a copy of the minutes. My secretary can produce the page number, whatever the Court desires. I did not do anything in violation of this Court's direction, nor will I dare.

THE COURT: All right, the jury is coming up. Get the jury up.

MR. ZOLOTO: I have an application.

THE COURT: What is the application?

MR. ZOLOTO: The application, the motion that I have made was to adjourn this trial so that we would have a full and complete record for the Court of Appeals, or in the alternative, then we'll proceed with the imperfect record to the Court of Appeals, and then perfect it, if all the evidence is in. Then I am

8 assuming something else, I am assuming something else, I am assuming the ruling will not be favorable. I don't know that yet because we haven't had a hearing.

THE COURT: I think the record is clear.

MR. ZOLOTO: You have made such a statement for the record?

THE COURT: I will be happy to hear your doctor Wednesday.

MR. ZOLOTO: For which I'm grateful.

THE COURT: We won't swear the jury until after I make a decision, if it's necessary to swear them at all. We'll take a short recess now.

(Whereupon, a recess was had.)

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-370

NATHAN KEVELSON, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

January 26, 1976
2:00 o'clock p.m.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

HENRI LEGENDRE
OFFICIAL COURT REPORTER (Acting)

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JOHN CADEN, ESQ.
Assistant U.S. Attorney

HYMAN L. ZOLOTO, ESQ.
Attorney for Defendant

DR. CHARLES A. POINDEXTER, called as a witness, having been first duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. ZOLOTO:

Q Dr. Poindexter, are you licensed to practice in the State of New York?

A I am.

Q And what medical school or schools did you attend, and where did you graduate from?

A I attended Northwestern University Medical School and taught at Postgraduate Medical School, Columbia University Medical School, New York University Medical School.

Q What was the year of your graduation?

A 1931.

Q And where did you intern?

A Internship was in St. Luke's Hospital in Chicago.

Q Do you have a specialty?

A Yes.

Q Are you engaged in the practice of medicine?

A My specialty is Cardiology.

Q For how long have you specialized in Cardiology?

A Since after the first year of internship.

Q How long would that be, approximately?

A Since 1930.

Q Is it fair to say that you have practiced or specialized in Cardiology for forty-five years?

A About that.

Q Are you a member and have you had membership in medical societies?

A Yes.

Q Which ones?

A New York Heart Association; American Heart Association; American College of Physicians; American College of Cardiology; past president of the New York Heart Association; American Heart Association Society for Clinical Research. As far as I know, that's about all.

Q Have you had any hospital connections?

A Yes.

Q Tell the Court what hospital connections, and what capacity you had those connections.

A First, at St. Luke's in Chicago; second, two years at the Evanston Hospital, Evanston, Illinois; and the Postgraduate Hospital, two years; and then three years afterwards at the Postgraduate Medical School and Hospital

doing research.

Q Have you had any hospitalization with respect to hospitals here in New York?

A Yes.

Q And in what capacity, tell the Court.

A At the Postgraduate Hospital here in New York, I was in the Department of Cardiology and Chief of Cardiology, I don't know how many years, about thirty years, I would guess.

Q What hospital was that?

A Postgraduate Hospital. It's now called University Hospital.

Q What other hospitals?

A Doctors' Hospital.

Q What other hospital?

A Bellevue Hospital.

Q What other hospital?

A I am on the consulting staff of Good Samaritan; Phelps Memorial; St. Francis; Tuxedo Memorial; Suffern Hospital; Port Jervis Hospital. I guess that's all.

Q Have you written any articles?

A I have written a great many articles; yes.

Q Have you written articles on cardiology?

A Yes.

Q How many would you estimate?

A I would estimate about sixty-five.

Q Have you had any medical teaching experience?

A Yes, I have taught for about thirty years Postgraduate Medical School at times; under Columbia; and at times independent, and at times under New York University, but it was all that time I taught.

Q In addition to all this, are you a member of an impartial panel wherein you testify with regard to cardiology cases?

A Yes, for the Supreme Court of the State of New York.

Q Have you testified for the Government in those cases?

A When they ask me, yes.

Q Now, Doctor, there came a time when you were requested by my office and particularly me, to examine Nathanial Kevelson; is that correct?

A That is correct.

Q Is it also correct that I told you that he was treated by physicians, and the consulting physician was Dr. Simon Dack, and that I wanted you to make an independent examination and to give our office an independent report; is that correct?

A That is correct.

Q And there then came a time that you requested of my office to furnish you all the doctors' reports and all the records with respect to Nathaniel Kevelson.

A All the hospital records and all the doctors' reports.

Q And all the doctors' reports?

A Yes.

Q Now, is it fair to state that all this was done before I became ill -- and you remember when I became ill?

A Yes.

Q Now, did there come a time that you examined Nathaniel Kevelson?

A That's correct.

Q And did you examine Nathaniel Kevelson before you saw all of the medical data, or after you examined the medical data?

A I wouldn't say all of it but almost all of it I saw before I examined him.

Q What didn't you see before you examined him?

A Only the things I know of are the examinations that occurred after I saw him.

Q After you saw him, by that you're referring to reports that I furnished you, or what other doctors said, or what they stated, or minutes of a decision that Judge Weinstein

rendered; is that correct?

A Yes.

Q All that you saw subsequent to the examination.

A Yes.

Q In connection with reading or examining all of the medical data prior to examination, and after examining Nathaniel Kevelson -- I'll withdraw the question.

When you examined Nathaniel Kevelson, was I present?

A No.

Q Where was I at that time -- I was in the hospital; isn't that correct?

A Yes.

Q Now, after you examined all the medical data and you examined Nathaniel Kevelson, would you tell this Court what you found, and I refer specifically to your first report which is issued November 11, 1975.

A Well, I asked Mr. Kevelson questions, as we do, trying to bring out the diagnosis. First, what the principal complaint was, which was that of pain in his chest when he made any attempt, physical exertion, or when he became tense, and occasionally that occurred at night spontaneously and would wake him up. Naturally, I went over all of the systems of his body, asked him did he see, hear, so forth, and then

he was examined, principal part of the examination was the electrocardiogram which showed the presence of a pacemaker which was not a normal electrocardiogram; chest X-rays which showed the presence of a large left ventricle; the listening to his heart as to the clarity of the tones and they were distant compared to mostpeople. The pain that he had came on so easily. He told me that he wasn't able to walk even a fourth of a block the first day on a cold day, and when he was tense in any way or frightened, pain came on almost immediately.

Occasionally, the pain came on spontaneously at night, all of which required a drug called nitroglycerine; and he told me that the nitroglycerine relieved him, which is one of the cardinal signs of coronary sclerosis and severe coronary sclerosis.

The electrocardiogram is not in this case of great value because it's an artificial electrocardiogram produced by the electric pacemaker put in the ventricle and therefore gives you a different reading than an ordinary electrocardiogram. I did see some of the electrocardiograms that were taken before the pacemaker had been put in and they were abnormal electrocardiograms, indicating not only a disease of the upper chamber of the heart, the right auricle; the sign that ordinarily makes a heart beat, but also changes in the ventricle indicative of arteriosclerosis.

Q And then you wrote your findings; is that correct?

A Yes.

MR. ZOLOTO: May I at this time respectfully state to the Court that Dr. Poindexter's written opinion is part of the evidence in this case, and I think we can all take notice of that.

Q Prior to your writing your report, the day you wrote the report, did you read the reports of Dr. Rosenberg?

A I don't know whether I read them that day, but I read them some time prior.

Q Prior to the day. And were his findings and statements correct, in your opinion?

A Essentially so, yes.

Q Now, prior to the time that you wrote your report, did you read the report of Dr. Simon Dach?

A I did.

Q And in your opinion were they essentially correct?

A They were.

Q And were the conclusions essentially correct?

A The conclusions were correct.

Q Now, there came a time, if you recall, when Judge Weinstein at a hearing rendered a decision; do you

recall that? Or I'll withdraw the question.

Do you recall that I furnished you with minutes and colloquy and a written opinion by Judge Weinstein with respect to the trial of Nathan Kevelson; do you remember that?

A Yes, I do.

Q And do you remember what the Judge said?

A With the nurse on hand he probably could go ahead with the trial.

Q Did he make any comment with respect to a doctor on hand?

A He may have; it's somewhere in here.

Q Doctor, I show you minutes of a hearing dated December 11, 1975, and in order to expedite the matter, will you please look toward the tail end which refers to Judge Weinstein's decision, and tell me whether you read the minutes?

A Yes, I read them. He said, Have a doctor and a nurse.

Q Didyou respond to that decision?

A Yes.

Q And did you respond to that decision in writing?

A Yes.

MR. ZOLOTO: And I, at this time, want to state to the Court most respectfully, that Dr. Poindexter

letter of December 22nd is in the record, part of this record. We all know about that.

Q Now, there then came a time that I was able to get to your office a copy of a memorandum that was entitled Findings and Opinion of Dr. Myron Texon -- given to the U.S. Attorney, John Caden, by telephone; and in January 1976 at one o'clock, do you remember seeing such a report? Do you have it before you?

A I have it before me.

Q And in addition thereto, was notes that I represented taken by Mrs. Vaz from my office of the oral examination of the patient given to you?

A I am not sure I understand that.

Q Well, what was given to you by me with respect to the report and findings of Dr. Myron Texon?

A It was a report of the questions and what you did, and what Mr. Kevelson did, and some of these things that all of you said.

Q And in addition to that, did you also have a report from Dr. Texon as to his opinions and findings?

A I don't think that I do have that.

Q Well, I show you three sheets of paper and ask you if you recognize them?

A No, I have not seen this before.

Q Is this the first time that you have seen it?

A Yes.

(continued next page)

hlg/ss
R2

Q All right. After the word conclusion, item number one, "This patient has an arteriosclerotic heart disease due to coronary arteriosclerosis. He has a demand pace-maker implant". Is that correct, that statement?

A Yes.

Q Item number two: "He is subject to episodes of chest pain, anginal syndrome precipitated by physical effort or emotional stress." Is that statement true?

A It's correct.

Q Is it complete?

A No, it's not.

Q What way is it not complete?

A It doesn't emphasize the fact the man has spontaneous angina without expression, without emotion.

Q Item number three, "The episodes of stress or exertion during the past 18 months has produced up to six attacks a day, but no evidence of congestive heart failure or myocardial infarction has resulted to date."

Is that statement true?

A It may be true, but it's not related to the case because of certainly a larger percentage of people that have angina pectoris and die of it don't ordinarily have cardiac congestive failure.

Q With everything that you have written in this

case, can you tell this Court with medical reasonable certainty as to whether or not evidence of a congestive heart failure or myocardial infarction has any bearing on Nathan Keveison's position with respect to his physical condition?

A It has no bearing as far as I'm concerned.

Q Tell the Court why.

A The disease is of the coronary arteries and they do not necessarily have to have congestive failure.

Q Number four: "Coronary arteriosclerosis is a progressive, pathological condition which is present and inherent in all individuals to different degrees depending on the hydrolic specifications of each person's coronary circulation. It is not influenced in its pathological course by external factors such as exertion or emotional stress."

Is that a correct statement in your opinion?

A Not in my opinion.

Q Can you tell the Court why.

A Because so many people that have coronary sclerosis die if they are put under stress or strain.

Q Now, this book at subdivision five: "Exertion and emotion stress can precipitate chest pain due to anginal syndrome but this is a reversible physiological manifestation which reverts to status quo ante when the effort or emotionally

stressful environment or situation is removed."

Is that a correct statement?

A No.

Q Can you tell the Court why.

A Because it may revert in some cases, but there are many times when it doesn't revert. A patient dies under the stress.

Q Now, let us discuss the opinion, and let's take the first paragraph.

"The natural course of coronary arteriosclerosis cannot be predicted with unfailing accuracy in any individual, including this patient." Is that a correct statement?

A Yes.

Q Second statement. "The clinical course may be relatively stationary for long periods as shown in this case."

Is that a correct statement?

A Yes, that's correct.

Q Has Nathan Kevelson been stationary for long periods?

A No, he has not.

Q Tell the Court how you know that?

A Because he didn't have his symptoms -- his symptoms did not begin of pain in his chest until 1974, and before that he knew that he had coronary arteriosclerotic

heart disease.

Q What about the pains at night; is that of recent origin?

A That is of fairly recent origin.

Q So is it fair to state that his condition is becoming progressively worse?

A I think so.

Q Let's take the next statement. "It may be rapidly progressive and it is also subject to sudden and dramatic changes, even sudden death." Is that a correct statement?

A That's correct.

Q Next paragraph. "The course of this patient's coronary artery disease, arteriosclerosis, has been stationary or slowly progressive to date (for 18 months)."

Do you think his condition has been slowly progressive for 18 months?

A Not from what he told me.

Q And from what you have seen, is it slowly progressive?

A No.

Q "No evidence of congestive heart failure or pre-infarction syndrome has been present." Is that a correct statement?

A I wouldn't say. I would say there is no evidence of failure but the pre-infarction syndrome has been present because the onset of pain at night for example is part of a pre-infarction syndrome.

Q Next paragraph. "I believe that this patient's participation in a Court proceeding will be stressful and lead to episodes of chest pain due to anginal syndrome with released by proper medication, nitroglycerin."

Is that a correct statement?

A No, it is not a correct statement.

Q Tell the Court why?

A Because nitroglycerin does not always relieve the pain; you go on and very often have a coronary thrombosis even though you had the nitroglycerin, it's not a cure all.

Q The next statement. "I do not believe the chest pains in themselves will cause a myocardial infarction." Is that a correct statement?

A To me it isn't a statement at all. I don't think it means anything.

Q Tell the Court why you think so.

A I don't believe that chest pain causes a myocardial infarction. It's the anteriosclerosis and the narrowing of the inside of the coronary that causes the myocardial infarction.

Q The next statement is: "This will come, in my opinion, from the further development of his antecedent and progressive occlusive arteriosclerotic disease."

Is that a correct statement?

A I don't understand what he means.

Q Tell the Court why you don't understand.

A This will come, what does this refer to. Does that mean death or angina, or what does it mean?

Q Now, I take you to the next paragraph: "I believe it is possible but very unlikely that a fatal arrhythmia such as ventricular fibrillation will occur in this case as a result of participating in a Court proceeding because the myocardium has not shown evidence of failure (congestive heart failure) and no myocardial infarction has occurred in this patient."

Is that a correct statement?

A No, I do not think that's a correct statement.

Q Tell the Court why?

A Because people do die of heart failure when they are put under stress, and they don't always die, but if they are put under stress long enough they usually do.

Q And if they don't usually die, what else could occur?

A They could have a coronary thrombosis and

gradually get over the coronary thrombosis with rest.

Q And sometimes would they not get over --

A Sometimes nothing happens to them.

Q Now, at the end of his opinion he states: "There is no intent in this report to predict with perfect accuracy the future course of this patient's illness. The Court may find sufficient medical data in this presentation upon which to make its decision."

Is that a correct statement?

A Well, to me it isn't any statement at all. You can't possibly predict the future course of any patient's illness, whether it's heart disease or anything else. People die of pneumonia, you don't think they are going to die. To me this just doesn't mean anything.

Q Now, I want you to look at the voir dire that was presented to you that Mrs. Vaz took, and to look at the very last paragraph and read it out loud. That's the record of the examination where questions were asked of Mr. Kevelson and Mr. Kevelson had stated certain things to Dr. Texon. Do you have it before you?

A No.

Q This is what I'm referring to, and I want you to look at the very last statement. Incidentally, I represent to this Court that this is in evidence.

I think you have it, but in the interest of saving time we're asked the final comment by Dr. Texon. Will you read what it says?

A "This is a very difficult problem. I'm glad I don't have to decide it, that the Judge is going to make the decision."

Q From everything that you know about this case medically, do you have a difficult problem in your decision?

A No.

(Continued next page.)

R3

Q With respect to Nathan Kevelson standing trial.

A No. I think a man who has angina of such a severe degree he can't walk a fourth of a block, who has spontaneous night angina, who has a pacemaker, obviously other type of heart disease besides the coronary sclerosis, it seems to me that his chances of survival are very poor.

Q Now, I don't know if you have this report with you, but on January 22, 1976, you wrote a report and gave it to me. Do you have it with you? If you don't, I'll furnish you with a copy.

A Furnish me with a copy because I got so much stuff.

Q And you addressed it to me, and if the Court please, I represent to this Court and to the federal attorneys that this is in evidence in this case.

You first stated to me, or you wrote to me and stated, "I have read the dictated report of the medical examination of Mr. Nathan Kevelson by Dr. Meyer Texon on January 18, 1976."

Is that a correct statement?

A Yes.

Q And then you said in the next following paragraph, "In examining the patient, particularly under these conditions such as a trial, in order to make up your mind as

to the patient's status, there are two phases that you are interested in. No. 1 is the patient's subjective story, and in my own method, I have tried to get the patient calm and usually ask him to tell me, in his own words, what he has been suffering from and to tell me what he complains about."

Now, you wrote, Doctor, "I have tried to get the patient calm and usually ask him to tell me in his own words what he's been suffering from and tell me what he complains about."

Did you make that statement based upon the voir dire that you read with respect to Dr. Texon?

A Yes.

Q Well, why did you make that statement? Tell that to the Court.

A Because it looked to me like this statement, the report of Dr. Texon's examination, both by questioning and otherwise of the patient, was made abruptly, quite abruptly.

Q Any other criticism you had for that voir dire between Nathan Kevelson and the doctor?

A No.

Q All right. Then you say, "I very seldom attempt in any way to contradict or emphasize any statement that he gives to me."

Was that because of the report that you read?

A That was partly. It's my technique, anyway.

Q Then you wrote -- third paragraph: "Mr. Kevelson's principal complaint to me was that of severe pain in his chest, which usually came as a result of physical exertion or tension, but occasionally occurred at night spontaneously. (This spontaneous night angina usually is indicative of a severe form of coronary sclerosis, and most people who have it are very likely to have a coronary thrombosis within a short period of time.)"

That is your language. What do you mean by within a short period of time? In your opinion.

A In a few weeks, few days to a few weeks.

Q Next paragraph: "The second principal thing that I wish to bring out is, does the patient have evidence that is objective of cardiac disease? Obviously, Mr. Kevelson does have objective evidence because he has a pacemaker and because his electrocardiograms before the pacemaker was implanted were abnormal to the point that sometimes his heart rate became as low as 30."

What significance should that be to the Court?

A Well, he obviously has a disease of his entire heart, both his auricle and his ventricle. The rest of the electrocardiogram appeared as those electrocardiograms appear that have advanced arteriosclerosis disease of the ventricle.

Q You then wrote, "He also has evidence of marked arterial sclerosis and left ventricular enlargement."

What does left ventricular enlargement mean?

A It may mean a number of things. It means enlargement of the left ventricular. It can come from a number of things, rheumatic heart disease, where the valve doesn't work right. It usually is associated also with arteriosclerotic disease, but it doesn't have to. If you have enlargement of the left ventricle, in my opinion, it's evidence of some type of heart disease.

Q "In addition to this, his response to the use of nitroglycerine (about three minutes after I have taken nitroglycerine I get relief from the pain.). This is about the usual time although some people get a response a little more quickly." That's a correct statement, is that not so?

A Yes.

Q And that's about the pain that we are talking about?

A Yes.

Q Then you said in the next paragraph: "Mr. Kevelso was not a very good historian in that his use of English is somewhat limited but regardless of this, I felt that his statement concerning the pain, its relation to the usual cause of the onset of pain, the relief that nitroglycerine

gives him and the spontaneous night angina all fitted in with a patient who has advanced coronary arteriosclerosis."

Is that correct?

A That's correct.

Q Then you wrote, "He has objective evidence because of the pacemaker, although it is difficult to interpret the pacemaker findings because it is not the normal operation of heart stimulation and contraction, but even so, the preceding electrocardiograms were sufficient to make me feel that these changes and the enlargement in the arteriosclerosis were sufficient to make a diagnosis completely modified."

And I want to ask you at any time, and I start from the very inception that I talked to you about an independent examination that you should make of the patient. In your examination of Nathan Kevelson, in your discussions with me and the reports that you read from all the doctors with the exception of Dr. Texon, and your discussion that you may have had with him that I don't know about, did you find at any time that anyone told you an untruth?

A No.

Q Or did you feel that anybody was telling you an untruth?

A No, I never felt that.

Q Now, particularly Nathan Kevelson, did you feel

6

that the statements that he made to you were truthful or untruthful?

A I thought they were truthful.

Q Why?

A Because he was direct. He was very frightened but he was direct in his answers, and his answers fitted in with the usual pattern that goes with this disease.

Q Wasn't it basically because of the findings and the observations and the records that you looked at?

A Well they are all of his records and all his replies to my questions fitted in with the usual course of arteriosclerosis.

Q Now, let's come to the last paragraph that you wrote.

"I also felt that it was particularly dangerous for him to appear in court because he had not only what I felt was advanced coronary sclerosis, but was having spontaneous night angina, which in most people indicates that a catastrophe is impending."

I want to ask you two questions about that statement. First of all, you said I also felt. Do you feel that way today?

A Yes.

Q Then you use an expression that a catastrophe

is impending. What do you mean by a catastrophe is impending?

A Death.

Q Now, you have never varied in all your reports that you submitted to this Court with respect to its decision, with respect to doctors' findings, with respect to your examination, and can you tell this Court on the basis of all the facts that you know now about this case, and all the records that you examined, can you state with reasonable certainty from the medical viewpoint, should Nathan Kevelson stand trial?

A He should not.

Q And will you tell the Court with reasonable certainty why not?

A Because he has angina pectoris with slight efforts. He has spontaneous night angina and he has quick and accurate response to nitroglycerine, and I feel that those things, which incidentally I've made mistakes about before, I don't make them any more. I feel that they all indicate that his coronary artery, whichever one it is is so narrow that with any prolonged tension he's very likely to have the coronary artery closed, and what will happen to him after that I'm not certain.

Q When you say you are not certain what will happen after that, are you medically certain that something

wrong medically will happen to him?

A Yes.

Q Like what?

A Like death, like convulsions from the onset of a ventricular febriiation; like a drop in blood pressure produced by a coronary thrombosis. There are a number of things that could happen to him medically.

Q Do you remember reading Dr. Dack had written that he should experience mild stress?

A Yes.

Q Was Dr. Dack correct?

A Yes.

MR. ZOLOTO: I have no further questions.

MR. CADEN: My name is John Caden. I won't be too long. I do have a couple of questions to ask you.

CROSS-EXAMINATION

BY MR. CADEN:

Q Prior to November 3rd --

MR. ZOLOTO: May I respectfully ask the Court, I have a little problem. May I sit up towards the front?

THE COURT: In the jury box if you like.

MR. ZOLOTO: I'll put this chair up here.

BY MR. CADEN:

Q When was the first time that you actually met with or spoke to or examined Nathan Kevelson?

A November 3, 1975.

Q And prior to November 3, 1975 did you ever know Nathan Kevelson existed?

A Yes.

Q Is that also true for his brother Al Kevelson?

A Yes.

Q And I gather you have known Mr. Zoloto for some time prior?

A I know Mr. Zoloto for quite some time.

Q Do you care for Mr. Zoloto?

A He's a patient of mine.

Q With regard to the first time that you spoke to Mr. Zoloto concerning Nathan Kevelson, did he tell you that Nathan Kevelson was under indictment?

A He told me he was under indictment, but he didn't tell me any details of anything, and I know nothing of it now.

Q So therefore you do not know what the defendant is charged with?

A I don't have the slightest idea.

Q You don't know whether it's serious or just a minor charge?

A I presume it was serious but it's only a presumption.

Q At any time during the time that you discussed the matter with Mr. Zoloto or Mr. Kevelson, did you ever inquire or want to know what Nathan Kevelson was charged with doing?

A No, I did not.

(continued next page)

T5
hlg/ss

Poindexter-cross

Q Now, did you ask Nathan Kevelson at any time through the course of your interview with him, what his occupation was?

A Yes, I did ask him. He said formerly he was a salesman.

Q Did he indicate to you when he was a salesman?

A No.

Q Did he indicate for whom he was a salesman?

A No.

Q Did he indicate to you that he was president of the Empire Ace Installation Corporation which does a multi-million dollar business in Brooklyn?

A No.

MR. ZOLOTO: If the Court please, what is the relevancy, whether he's the president of a multi-million dollar corporation in a medical hearing. I don't know, I raise that objection. I really believe it's irrelevant, cluttering up the record.

Q You always thought his occupation was that of a salesman?

A As far as I knew.

Q Were you not aware of the fact that he was also a director of a Central State Bank located in midtown

New York?

A I knew nothing about him. I don't know anything about him yet, except what his physical status is.

Q Now, prior to May of 1974, did the defendant describe his physical condition to you?

A Yes, he did, to some extent. He is a person who has a rather limited vocabulary, but he told me he didn't feel well, and his own doctor told him because of his weakness to have a series of electrocardiograms, all of which showed a rather rare condition, which not all of us know about, which is sick sinus syndrome.

Q But other than the sick sinus condition, that's just a low pulse beat?

A No. None of us know very much about it, but it's a disease which affects usually the primary pace-maker of the heart called the . But sometimes affects the AV nole, which is a secondary pace-maker and in some individuals seems to effect the person's entire heart muscle.

Q Did you know in May -- incidentally, the time Nathan Kevelson started to experience the sick sinus syndrome that he was also indicted here in the Federal District Court?

A No.

Q Now, with regard to the pain itself, or prior to his having that pace-maker implanted July 3rd, 1974, the

doctors, of all of the records of all of the doctors he had suffered no pain prior to the implantation of the pace-maker?

A He told me the pain started after the pace-maker had been put in.

Q Prior to July he experienced no pain, the pace-maker was put in in July, July 3rd, and it was subsequent to July 3rd after the pace-maker had been implanted that he started to experience these pains; pretty accurate?

A I think that's accurate; yes.

Q So prior to his having a pace-maker put in, he never went to any cardiologist or any doctor and complained of any pain in his heart?

A That I don't know.

Q As far as the records indicate.

A As far as my records indicate, I don't know.

Q Now, with regard to the pace-maker itself, the purpose -- what type of pace-maker is this?

A I think it's a demand pace-maker.

Q And this demand pace-maker does what?

A It takes over the stimulation of the ventricle of a heart to beat by electrically shocking it at certain intervals, depending on how it's turned.

Q Does it have a tendency to steady his pulse

beat?

A Yes, it has a tendency to steady his pulse beat.

Q At what pulse beat? What number, 72?

A 72 usually, but it varies a good deal.

Q And that pace-maker then was not put in to alleviate or relieve any pain that we know of but rather to stabilize the pulse beat?

A That's correct.

Q With regard to the defendant's physical condition, to your knowledge, has Nathan Kevelson ever been hospitalized other than for the implantation of the pace-maker as a result or for his cardiac condition?

A Not to my knowledge.

Q And to your knowledge, has he ever suffered a myocardial infarction?

A Only by his statement.

Q He indicated to you he suffered a myocardial infarction? When was that?

A No, it was in '72 that his pulse was 30, I'm sorry.

Q I want to make sure. Could you just briefly tell me what the myocardial infarction is that you described on direct examination, just generally, what the condition is?

A It's what results when the blood supply to a heart muscle is shut off, it no longer gets any blood.

Q The heart doesn't act like a pump?

A The heart doesn't act like a pump.

Q But to our knowledge as of today we have information that Nathan Kevelson has suffered no myocardial infarction?

A Not that I know of.

Q To this date, and meaning today, we have information that he has suffered no congestive heart failure?

A Not to my knowledge.

Q And we have information which leads us to believe that he has never in fact been hospitalized as a result of this cardiac condition otherthan outside of the implantation of the pace-maker?

A I have no information.

Q Doctor, with regard to the angina -- angina to me means chest pain, would that be a fair statement of translating it?

A Yes.

Q Now, in connection with Nathan Kevelson's angina, has he ever reported to you that in connection with such a pain he has fainted?

A I believe he did, but I would have to go carefully through my notes.

Q You take your time if you have your notes. I can wait until you look it up. I have a report from you but I don't see anything in there concerning that.

A I don't see it on here, but vaguely I remember something about that, but I don't have it on my notes.

Q You are referring to a one-page document, which I take it is your handwritten notes?

A Yes.

Q How long did that examination take place?

A About an hour, hour and fifteen minutes.

Q In connection with Mr. Kevelson's angina, did he ever indicate to you that he also suffered blackouts or dizziness?

A I don't remember.

Q Certainly not in your report?

A Not in my report.

Q Did he ever indicate to you as a result of his angina he suffered chills?

A Not in my report.

Q What I am saying most likely if he did tell you these things you would note them for --

A I might possibly -- if I didn't think they were very important I wouldn't put them in.

Q What about anything like a cold sweat?

A I think he did mention that he broke out in a cold sweat.

Q Did you make reference to that in your report?

A Not inthe report because it's very common when people have angina pectoris.

Q Were these physiological manifestations, fainting, fever, chills or cold sweat, at least there is nothing in your report to indicate that he in fact told you that these physiological manifestations accompanied themselves with his angina.

I gather a lot of what your diagnosis is depends upon whether or not Nathan Kevelson has accurately reported to you his pain.

A Yes, part of it is that; part of it is what I find looking at him.

Q You base your opinion by looking at the man but also you have to take him at face value by what he tells you?

A I have examined a great many patients, I think I'm reasonably good at telling when they are telling me the truth.

Q I wish I had that facility here, Doctor.

Have you determined how many attacks this angina pectoris -- it means chest pain?

A It means chest pain due to coronary sclerosis.

Q Did you ask Nathan Kevelson since May or July of 1974 how many of these attacks of angina pectoris he had per day?

A No, I wouldn't say that would be relevant at all.

Q You would not want to know how many times he felt this pain in his chest?

A No, I wouldn't.

Q Or for how long these pains would have lasted?

A I asked him how long they lasted. He said always within three minutes; nitroglycerine relieved him, because that's very important.

Q But in other words, you knew the length of the pain that it was between three and five minutes.

A If he took the nitroglycerine.

Q Did you ever ask him what emotional stress or physical efforts caused him those pains?

A I asked him and it was mostly physical effort.

Q Physical exertion?

A Particularly on cold days.

Q And did you ask him where he did this physical exertion?

A Walking on the street.

Q And not at his job, as you recall?

A Not that I recall.

Q As far as you knew?

A As far as I was concerned his job was never mentioned.

Q So for example, for the period of time which he complained of these pains, it was your impression that he would get them primarily by walking?

A If he attempted to walk, particularly on a cold day.

Q But never at work?

A I didn't ask him that.

Q Never anything other than usually by walking?

A Particularly on a cold day.

Q Now, to your knowledge, had Nathan Kevelson worked since May of 1974?

A I don't know.

Q If you knew that he had worked since May of 1974, fairly regularly in fact, had even worked during the month that you examined him, would that change your opinion concerning his physical condition?

MR. ZOLOTO: I'll object to that. There is no evidence and not a scintilla of evidence on the hypothetical or the question as asked of this doctor.

THE COURT: Any basis for that?

MR. CADEN: I have been talking to an individual

who said he saw Nathan Kevelson at work in November of this year.

MR. ZOLOTO: Let's produce the evidence.

THE COURT: It's a proper question.

A Am I supposed to answer this?

MR. CADEN: The Judge said you should.

THE COURT: Yes.

A It wouldn't change my opinion at all.

Q Assuming that physical exertion caused the angina or chest pain, if the man worked during that period of time even in November, it would seem to be a pain that he could live with if he voluntarily worked, would it not?

A Worked and working under a great deal of stress such as in court in my opinion are far different things.

Q I am talking about the fact that angina could be caused or precipitated by physical exertion.

A It could be, sure.

Q And like Nathan Kevelson always told you,he got his angina by walking?

A Yes.

Q If you knew that he in fact had worked during the period of time and yet could live with the pain, that wouldn't influence you at all with regard to standing trial?

A Not the slightest bit.

Q Now, with regard to emotional stress. Did you ever ask Nathan Kevelson concerning his angina, what tension or what emotional strain caused this angina condition?

A I did ask him that.

Q What did he tell you?

A He said being accused of doing bad things made the angina come on immediately.

Q Would it be fair to say that the tension was precipitated solely by accusations made by others concerning his criminal behavior?

A I don't know whether he would get it from other things or not. Perhaps he would, but I remember asking him that because he did have one attack in the office where he had pain; one could get him off the subject of his criminal or whatever it was he was accused of.

Q You observed it when you began to talk about his -

A I didn't talk. I let him talk.

Q He volunteered his problem to you?

A Yes.

Q And you noticed there was a tension that accompanied it?

A Yes.

(continued next page)

hlg/ss
T7

Q But to your knowledge, the only attention which has caused Kevelson any angina problems that he suffered, these angina pains is as a result of this case?

A I have no idea. I don't know. I never watched him talk.

Q When a doctor examines a patient such as Mr. Kevelson -- did he relate to you, did you observe any other physical manifestation which would indicate to you that he may suffer from a severe angina pectoris?

A Yes, it shortens the breath.

Q With regard to shortness of breath, is there any way for a doctor to test a patient and to determine whether or not the shortness of breath is shortness of breath or fatigue?

A There are methods but they are grossly inaccurate methods.

Q I gather then for all practical purposes, you didn't test him to see whether he suffered shortness of breath?

A No.

Q I gather then it may or may not be that what he describes as a shortness of breath may be fatigue?

A It's possible.

Q DoctOr, of all of those defendants in a criminal

trial, which you have in this case, the defendant who was physically unable to stand trial, how many of those either fatalities or serious or harm came to during the course of a trial?

A I wouldn't say during the course of a trial. I would say all of them except one are dead at the end of the year.

Q But not during the course of a trial?

A Not necessarily during the course of a trial.

Q At any time, Dr. Poindexter, have you considered a possibility that Nathan Kevelson feigned or exaggerated his angina pectoris in order to escape going on trial?

A I didn't think that he did.

Q Have you considered the possibility?

A I considered the possibility.

Q This man that was coming to you.

A That's particularly why I asked him how long did it take the nitroglycerin to work. There was a period of time in the '30s when there were many cases of fraud, and one of the principal ways of seeing whether the patient was telling you the truth was the action of time of nitroglycerin, how long it took before it had its effect.

Q Then you have to credit the individual with

whatever answer he gave you?

A You credit him.

Q You assume what he's telling you is true.

With regard to this spontaneous or nighttime angina, you accepted that because Nathan Kevelson told you it was so?

A Yes.

Q I gather there was nothing independent of his statement which would indicate that that was correct?

A No.

Q Now, if that condition did not exist, would that in any way have caused you to rethink your diagnosis?

A Not on this man.

Q When we talk about arteriosclerosis, we all have it, don't we?

A I wouldn't say that we all have it, but I would say a high percentage of people have it.

Q The older you get the more likely you are to develop it?

A Yes.

Q It's especially true of men and women as old as Nathan Kevelson?

A After they reach their menopause they usually have arteriosclerosis, about the same with men.

Q The fact that he has this arteriosclerosis is not uncommon to a man his age?

A No.

Q If he didn't have it it would be somewhat of a surprise?

A Yes.

Q I wonder if, for example, during the course of this trial the answer might be or might not be to give Nathan Kevelson an electrocardiogram at the end of each day's trial. What would that tell us in terms of the tension and strain which had taken place during the course of the day?

A Nothing.

Q Wouldn't it indicate --

A It wouldn't be of any help at all.

Q It wouldn't be of any help at all?

A No.

Q Any particular reason why you say that?

A It wouldn't be of any help.

Q Is that because of the possibility always exists?

A Possibilities always exist.

Q In your judgment, possibilities or probabilities?

A I think the probability in this man -- I think the probability.

Q But what I'm saying, the probability exists. Are you say possible or probable that Nathan Kevelson would suffer death or permanent heart damage?

A I think it's probable.

Q Now you are saying even if there was monitoring of his heart during the course of the trial by electrocardiograms and the like, that would not in any way indicate to us that this problem may be down the road?

A It wouldn't benefit you in the least.

Q If you were to find out later that these complaints of Nathan Kevelson were either exaggerated or feigned, would that in any way change your diagnosis?

A If I found that they were misstatements, certainly it would change my opinion.

Q Now, I know you are familiar with courts and trials, but would you not agree with me, that at least, to your knowledge, there is no physical exertion involved in the trying of a criminal case, in the sense we don't ask a man to roam around the room and do anything strenuous?

A Not very much.

(Continued next page.)

8-1

Q So at least as to one of the two possible causes of his heart condition being aggravated, it would be pretty much eliminated by the fact that it would not be physical exertion?

A No physical.

Q But I gather your point is that it's the other, what I call the emotional tension of the trial is what concerns you.

A Right.

Q Now, since May of 1974, which is when Nathan Kevelson was indicted, there has been some publicity about the case. He obviously suffered from trauma with his family, friends, socially. Can you think of any other kind of tension that Nathan Kevelson could possibly feel that has not already been visited upon him as a result of the lengthy time that this case has been outstanding?

A Your Honor, I don't know how I can answer a question like that.

THE COURT: You don't have to answer it.

THE WITNESS: I couldn't answer a question like that.

THE COURT: Don't bother.

Q To your knowledge, do you know how many times Nathan Kevelson had appeared in court?

A No, I don't.

Q And would that in any way change your judgment in this case that he could have attended at least half a dozen sessions and has withstood them all without any serious heart damage?

A Yes, I would just say he was just very lucky, that's all.

MR. CADEN: I have nothing further.

REDIRECT EXAMINATION

BY MR. ZOLOTO:

Q Doctor, I just have to ask you a few questions.

A question was asked of you as to whether you knew prior to May of 1974 that Nathan Kevelson ever visited any cardiologist, was treated for his heart, and then you made a statement of something that you recognized in 1972 with a pulse rate of 30. Would it be fair to say that is in connection with his heart, having a pulse rate of 30?

A Yes.

Q Now, you received from my office today a copy of a report that I received from Dr. Rosenberg who treats Nathan Kevelson; is that correct?

A Yes.

Q I gave you a copy this morning before I walked in my office. I delivered a copy to your office; is that

correct?

A I think so.

Q Well, if you haven't got it, here's a copy.

A All right.

Q Did I not give you every report that was ever issued by every doctor who treated him, including all the reports of Dr. Rosenberg?

A Yes.

Q You want to see them -- you insisted on that, isn't that correct?

A That's correct.

Q Now, I call your attention particularly to the earlier reports, and I represent to this Court and the U.S. Attorney, that this is all in the record and part of the evidence.

After reading Dr. Rosenberg's report that you got today, and the reports that were furnished you before you examined Nathan Kevelson, can you refresh your recollection now and tell us whether Nathan Kevelson had any heart difficulty or visited cardiologist, or was treated by a doctor for cardiology or for his heart prior to May 1974?

A Yes, I think he did.

Q And did he have in your opinion a heart

condition prior to May 1974?

A Yes.

Q Now, Doctor, for the record, and for this Court, based upon all the experience you have, can you tell us with reasonable certainty, everything that you have examined, including the patient and records, and everything you know about this case, what is the diagnosis in your opinion with reasonable medical certainty of Nathan Kevelson's condition?

A I think he has two conditions, the one that causes him the most trouble is coronary sclerosis and the second is sick sinus syndrome.

Q Now, with all the experience you have, and with all the years that you have practiced, can you state with reasonable medical certainty, as a doctor, should Nathan Kevelson stand trial and be in the courtroom?

A No.

Q Now, at this time of the year, should Nathan Kevelson appear regularly in a courtroom?

A No.

Q Now, tell the Court why.

A Because I think because of the tension and the cold weather he will probably expire.

MR. ZOLOTO: I have no further questions.

THE COURT: Thank you very much, Doctor.

MR. ZOLOTO: Tomorrow at ten o'clock?

MR. CADEN: Suppose I give your chambers a call as soon as Dr. Texon arrives?

MR. ZOLOTO: Will somebody do this poor lawyer a favor and call me?

THE COURT: I have other business which will start at 9:30. I suspect we won't get to this until about 11:00.

MR. ZOLOTO: May I be here at 11:00, ready to proceed?

THE COURT: I don't want the doctor waiting around unnecessarily.

(Whereupon, the Court stood in recess for the day.)

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

74 CR. 370 (JBW)

- against -

AL KEVELSON and NATHAN KEVELSON,

AFFIDAVIT

Defendants.

----------X

STATE OF NEW YORK)
) S.S.:
COUNTY OF NEWYORK)

HYMAN L. ZOLOTO, being duly sworn, deposes and says:

1. I represent the defendant, Nathan Kevelson.

2. Pursuant to an agreement between the United States Attorney's office and my office, it was agreed that if Dr. Meyer Texon found that Mr. Nathan Kevelson could safely stand trial, a hearing would be held to take evidence on this issue, and that Dr. Texon would be prepared to so testify.

3. It was further agreed that my office would receive a cassette with Dr. Texon's report dictated thereon so that proper preparation could be made for said hearing.

4. I was advised by John Caden that Dr. Texon would not dictate a cassette report, but that in lieu thereof, would dictate a telephonic report to Mr. Caden, which would be

transcribed by Mr. Caden's office, and a copy sent to me. I examined said report on Tuesday, January 20, 1976, when it was delivered to me.

5. After reading Dr. Texon's report, I immediately called Dr. Charles Poindexter for his opinion regarding this report and to inquire as to when he could testify at a hearing.

6. Dr. Poindexter informed me that he was ill, at home, but agreed to meet with me on Wednesday, January 21st, so that I could deliver to him a copy of Dr. Texon's report.

7. I met with Dr. Poindexter on Wednesday, and delivered Dr. Texon's report. I again inquired from Dr. Poindexter whether he would testify at a hearing, since time was of the essence in this case. Dr. Poindexter informed me that he could not be available to testify until the following week due to his illness and the very seriously ill patients who required his attention.

8. Having not heard from Dr. Poindexter on Wednesday, I telephoned him at his office on Thursday at 9:30 AM, and he agreed to cancel all of his appointments between 11:00 and 12:00 AM to read Dr. Texon's report, and dictate his findings and opinion to my secretary. He further informed me that at great sacrifice to his patients and himself, because of the defendant's medical condition, he will arrange to leave his office at 2:00 PM on Monday, January 26th, to testify at a hearing.

9. I telephoned Dr. Benjamin Rosenberg, the attending physician, and he called be back on Thursday, at which time I apprised him of all the facts in the case. Both he and I agreed that I would send Dr. Texon's report to him by messenger; that he would respond to Dr. Texon's report in writing, and that, because of the very short notice, it would be impossible for him to testify as early as Monday due to hospital and office commitments, since he has patients who are critically ill. He further informed me, as soon as he can, as to when he would be able to appear.

10. I have talked to John Caden on several occasions, and he has informed me that Dr. Texon cannot appear to testify because he is out of town and will arrive in New York on Monday evening. I asked John Caden: "for what purpose is he out of town?" John Caden informed me that he is doing some writing and he does it best away from New York.

11. I have attempted to alert John Caden as to what has transpired since I last spoke with him, regarding Dr. Poindexter's report and affidavit. I was informed that John Caden was out of the office and would return at 5:30 PM, at which time I hope that either I, or my office, will communicate with him and apprise him of the facts.

12. I thereafter communicated with Keith Secula to arrange for me to appear, with Mr. Caden, before this Honorable

Court, and an appointment was granted me for Friday, January 23rd at 10:30 AM, for which I am very grateful.

13. Dr. Rosenberg has agreed to furnish me his response to Dr. Texon's report, which I hope to receive Friday morning, which I will submit to this Court.

14. Most respectfully, I submit that this Honorable Court must grant a continuance, or a reasonable stay for a short time, due to all of the circumstances in this case until, at the very least, a full hearing is held and a decision is rendered with finality.

15. From the statements recently made to me by your Honor, and by John Caden on the telephone, it is conceded that, at no time, have I been dilatory in this matter.

16. Most respectfully, the sole issue that should be determined, in the interest of justice, in view of all of the evidence that has been presented, and will be presented in this case to this Honorable Court, is whether or not the trial with respect to the defendant, Nathan Kevelson, should commence on January 26, 1976.

17. This application is made in good faith. Unfortunately, I became seriously ill on October 13th, 1975, and was away from my office for approximately fifty days.

WHEREFORE, I respectfully pray and ask this Honorable Court that under all of the circumstances herein and upon the complete record submitted, a continuance be granted of Nathan Kevelson's trial, which is scheduled to commence on January 26, 1976, and for such other and further relief that this Court may deem just and proper.

HYMAN L. ZOLOTO

SWORN TO before me this
22nd day of January, 1976.

KATHLEEN M. FOWLER
NOTARY PUBLIC, State of New York
No. 30-5268070
Qualified in Nassau County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

-against-

AL KEVELSON and NATHAN KEVELSON,

Defendants.

----------X

74 CR 370 (JBW)

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

CHARLES A. POINDEXTER, being duly sworn, deposes and says:

1. ON January 20, 1976, Hyman L. Zoloto, attorney for defendant Nathan Kevelson, communicated with me at my home since I was ill, to request of me that I respond to a report that he had just received and read of Dr. Meyer Texon with respect to his physical examination of Nathan Kevelson, the defendant herein.

2. Mr. Zoloto also inquired of me as to whether I could arrange to be present and testify at a medical hearing.

3. I informed Mr. Zoloto that since I was ill and had not been at my office that, firstly, it would be impossible for me to testify in this matter due to my illness and because of commitments that I had with very sick patients until the following week.

4. However, I agreed to meet with Mr. Zoloto at my office on Wednesday, January 21st, at which time I obtained the report of

Dr. Meyer Texon concerning his physical examination of Nathan Kevelson. I could not examine the report nor comment on it until Thursday, January 22nd, due to my illness and the commitments I had regarding my patients, but I agreed to cancel all appointments at my office between 11:00 and 12:00 to read Dr. Texon's report and thereafter I dictated to Mr. Zoloto's secretary, Mrs. Kathleen Fowler, the report which is attached hereto marked Exhibit "A".

5. I further agreed, at great sacrifice to both myself and to my patients, because of the seriousness of this case, particularly with respect to Mr. Kevelson's health, to make myself available for 3:00 p.m. on Monday, January 26th, to testify before this Honorable Court should the Court require me to do so, so that this Court could be apprised of all the facts concerning Mr. Kevelson's illness and what the consequences would be in the event he appears in court for trial.

/s/
CHARLES A. POINDEXTER

Sworn to before me this
22nd day of January, 1976

/s/

KATHLEEN M. FOWLER
NOTARY PUBLIC, State of New York
No. 30-4600070
Qualified in Nassau County
Commission Expires March 30, 1976

CHARLES A. POINDEXTER, M. D.
121 EAST 60TH STREET · NEW YORK 22, N.Y.

TEMPLETON 8-5820

January 22, 1976

Hyman L. Zoloto, Esq.
600 Madison Avenue
New York, New York 10022

Re: Nathan Kevelson

Dear Mr. Zoloto:

I have read the dictated report of the medical examination of Mr. Nathan Kevelson by Dr. Meyer Texon on January 18, 1976.

In examining the patient, particularly under these conditions such as a trial, in order to make up your mind as to the patient's status, there are two phases that you are interested in. Number 1 is the patient's subjective story, and in my own method, I have tried to get the patient calm and usually ask him to tell me, in his own words, what he has been suffering from and to tell me what he complains about. I very seldomly attempt in any way to contradict or emphasize any statement that he gives to me.

Mr. Kevelson's principal complaint to me was that of severe pain in his chest, which usually came as a result of physical exertion or tension, but occasionally occurred at night spontaneously. (This spontaneous night angina usually is indicative of a severe form of coronary sclerosis, and most people who have it are very likely to have a coronary thrombosis within a short period of time.)

The second principal thing that I wish to bring out is, does the patient have evidence that is objective of cardiac disease. Obviously Mr. Kevelson does have objective evidence because he has a pacemaker and because his electrocardiograms before the pacemaker was implanted were abnormal to the point that sometimes his heart rate became as low as 30. He also has evidence of marked arterial sclerosis and left ventricular enlargement.

In addition to this, his response to the use of nitroglycerine ("about three minutes after I have

EXHIBIT A

taken nitroglycerine I get relief from the pain"), this is about the usual time although some people get response a little more quickly.

Mr. Kevelson was not a very good historian in that his use of English is somewhat limited but regardless of this, I felt that his statement concerning the pain, its relation to the usual cause of the onset of pain, the relief that nitroglycerine gives him and the spontaneous night angina all fitted in with a patient who has advanced coronary arteriosclerosis. He has objective evidence because of the pacemaker, although it is difficult to interpret the pacemaker findings because it is not the normal operation of heart stimulation and contraction, but even so, the preceding electrocardiograms were sufficient to make me feel that these changes and the enlargment in the arteriosclerosis were sufficient to make a diagnosis completely bona fide.

I also felt that it was particularly dangerous for him to appear in court because he had not only what I felt was advanced coronary sclerosis, but was having spontaneous night angina, which in most people indicates that a catastrophe is impending. I feel as strongly as ever that his story was true. There is no question about his physical findings and that the chances of having a coronary thrombosis with the potentiality for death is correct.

Sincerely,

/s/

kf

Charles A. Poindexter

NOTICE OF ENTRY

Sir:-Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

HYMAN L. ZOLOTO

Attorney for

Office and Post Office Address

600 MADISON AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

HYMAN L. ZOLOTO

Attorney for

Office and Post Office Address

600 MADISON AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

To

Attorney(s) for

A 296

Index No. (JBW) 74 CR 370 Year 19

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

AL KEVELSON and
NATHAN KEVELSON,

Defendants.

AFFIDAVITS AND
MEDICAL REPORT

HYMAN L. ZOLOTO

Attorney for Deft. Nathan KEVELSON

Office and Post Office Address, Telephone

600 MADISON AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

(212) 751-5200

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

- against - 74 CR. 370 (JBW)

AL KEVELSON and NATHAN KEVELSON,

AFFIDAVIT

Defendants.

----------X

STATE OF NEW YORK)
) S.S.:
COUNTY OF NEW YORK)

NATHAN KEVELSON, being duly sworn, deposes and says:

1. I am a defendant in the above entitled action.

2. I understand a jury is being selected in my case on Monday, January 26, 1976.

3. I also understand that following the selection of the jury, this Court will convene an evidentiary hearing with respect to my medical fitness to stand trial.

4. My attorney, Hyman L. Zoloto, has advised me that in the event of such an evidentiary hearing the Court finds the trial should proceed, he then intends to press his pending application before the Court of Appeals for a stay of the trial pending the determination by the Court of Appeals of the petition for Writ of Mandamus.

5. Mr. Zoloto has fully advised me of my double jeopardy rights. In the event that the hearing and determination of this matter by the Court of Appeals should require the termination of the trial, which will have commenced with the selection of the jury, then, I hereby waive any double jeopardy claim that I may have.

6. I make this waiver freely and voluntarily, and in the interest of insuring that full and proper consideration can be given to the pending mandamus application.

Nathan Kevelson
NATHAN KEVELSON

SWORN TO before me this
26th dayof January, 1976.

SALVATORE F. MENDOLA
NOTARY PUBLIC, STATE OF N. Y.
No. 24-2[illegible]
Qualified in Kings Co.
Comm. Expires March 30, 1977

NOTICE OF ENTRY

Sir:-Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

HYMAN L. ZOLOTO

Attorney for

Office and Post Office Address

600 MADISON AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

HYMAN L. ZOLOTO

Attorney for

Office and Post Office Address

600 MADISON AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

To

Attorney(s) for

A 299

Index No. 74 CR. 370 Year 19

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

AL KEVELSON and NATHAN KEVELSON,

Defendants.

AFFIDAVIT

HYMAN L. ZOLOTO

Attorney for Deft. Nathan Kevelson

Office and Post Office Address, Telephone

600 MADISON AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

(212) 751-5200

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

A 300

BENJAMIN ROSENBERG, M. D., F.A.C.P.
RICHARD RUBIN, M. D.
ALEXANDER J. LAZAR, M. D.
P. C.

10 STRATFORD ROAD
BROOKLYN, N. Y. 11218
INGERSOLL 9-4600-1

January 23, 1976

Mr. Hyman Zoloto
600 Madison Avenue
New York, New York

RE: NATHAN KEVELSON

Dear Mr. Zolotos:

I regret to tell you that it will be impossible for me to be present at the hearing concerning Mr. N. Kevelson, Monday, January 26, 1976, since I have many sick patients in the hospital who require my attention, and I do not have enough time to arrange for their care by some other physician. In addition, I have a heavy office schedule which I cannot cancel out.

I have read the dictated report of the medical examination carried out by Dr. Myron Texon on January 19, 1976 on Mr. N. Kevelson. I must emphasize that I have known Mr. Kevelson as a patient since 1967, and have had a chance to follow him for all these years. I have stated previously that in 1971, the patient complained of dyspnea on exertion and examination showed some increase in the size of the heart. It was, at that time, that because of his symptomatology and his abnormal electrocardiogram, that I made a diagnosis of arteriosclerotic heart disease. This diagnosis has certainly been amply confirmed by the course of events since he developed a progressive bradycardia starting, at least, in May, 1971, which became progressively more marked. In August, 1972 the heart rate varied between 30 to 55 per minute. In January, 1973 there were periods of junctional bradycardia with a rate of 42 per minute. The patient subsequently developed atrial flutter and finally junctional bradycardia with a rate of 33 to 45, with an average rate of 38 per minute. The electrocardiogram suggested myocardial involvement with "sick sinus syndrome". All of the above was evidence of severe underlying coronary artery disease and a pacemaker was implanted in July, 1974 to control possible serious consequences of arrhythmia.

I must point out that since the pacemaker implantation, the patient has developed progressively increasing angina requiring four to six nitroglycerine tablets daily. This angina recently (within the last six weeks) has occurred spontaneously during his sleep, at night, and has awakened him a number of times requiring the use of nitroglycerine.

Mr. Kevelson's angina is not only exacerbated by exertion, but also by emotional distress.

A 301

BENJAMIN ROSENBERG, M. D., F.A.C.P.
RICHARD RUBIN, M. D.
ALEXANDER J. LAZAR, M. D.
P. C.

10 STRATFORD ROAD
BROOKLYN, N. Y. 11218
INGERSOLL 9-4600-1

II

RE: NATHAN KEVELSON

I feel that it is very dangerous for Mr. Kevelson to face the trial because the angina, that may occur, is not necessarily a reversible situation. Also, in his case, because of the severe underlying and progressive nature of his coronary artery disease, it is entirely possible for him to develop a fatal ventricular arrhythmia, which will not be prevented by his pacemaker.

I must respectfully disagree with Dr. Texon's conclusion "that a fatal arrhythmia, such as ventricular fibrillation is unlikely to occur as a result of participating in a court proceeding, because the patient has not had evidence of failure or myocardial infarction". There are many situations in the literature in which fatal arrhythmias have been produced in people with underlying coronary disease, in situations such as exercise tests, and more importantly after unusual emotional stress. It is not unusual in the experience of physicians to have someone succumb to a fatal arrhythmia after receiving bad news, such as a death of a husband, etc.

Since Mr. Kevelson has shown evidence of increasing angina and disease in the last few years and particularly of late, and since he has developed nocturnal angina, I believe it is very hazardous for him to face a trial. With the severe emotional stress that the trial will create in this patient, a fatal arrhythmia and untoward coronary incident is entirely possible.

Yours very truly

Benjamin Rosenberg

BR/r

BENJAMIN ROSENBERG, M.D.